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**5 Year B.A. B.L., Course**  
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**COURSE MATERIALS**

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# 1. CONSTITUTIONAL LAW - II

The President of India is the head of state of the Republic of India. The President is the formal head of the legislature, executive and judiciary branches of Indian Democracy and is the commander-in-chief of the Indian Armed Forces. The powers to pardon and clemency vest with the President of India

The President is elected, from a group of nominees, by the elected members of the Parliament of India (Lok Sabha and Rajya Sabha) as well as of the state legislatures (Vidhan Sabhas), and serves for a term of five years. Historically, ruling party (majority in the Lok Sabha) nominees have been elected and run largely uncontested. Incumbent presidents are permitted to stand for re-election. A formula is used to allocate votes so there is a balance between the population of each state and the number of votes assembly members from a state can cast, and to give an equal balance between State Assembly members and National parliament members. If no candidate receives a majority of votes, then there is a system by which losing candidates are eliminated from the contest and their votes are transferred to other candidates, until one gains a majority. The Vice-President is elected by a direct vote of all members (elected and nominated) of the Lok Sabha and Rajya Sabha.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly, with few exceptions, all of the authorities vested in the President are in practice exercised by the Council of Ministers, headed by the Prime Minister

## POWERS AND DUTIES

### Legislative

The President summons both the Houses (the Lok Sabha and the Rajya Sabha) of the Parliament and prorogues them. He or she can dissolve the Lok Sabha. These powers are formal, and by convention, the President uses these powers according to the advice of the Council of Ministers headed by the Prime Minister.

The President inaugurates the Parliament by addressing it after the general elections and also at the beginning of the first session each year. Presidential address on these occasions is generally meant to outline the new policies of the government.

All bills passed by the Parliament can become laws only after receiving the assent of the President. The President can return a bill to the Parliament, if it is not a money bill or a Constitutional amendment bill, for reconsideration. When after reconsideration, the bill is passed and presented to the President, with or without amendments, President is obliged to assent to it. The President can also withhold his assent to the bill thereby exercising pocket veto.

When both Houses of the Parliament are not in session and if government feels the need for immediate action, President can promulgate ordinances which have the same force and effect as laws passed by Parliament. These are in the nature of interim or temporary legislation and their continuance is subject to parliamentary approval. Ordinances remain valid for no more than six weeks from the date the Parliament is convened unless approved by it earlier.

## **Executive powers**

The Indian Constitution, vests in the President of India, all the executive powers of the Central Government. The President appoints the Prime Minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

The Council of Ministers remains in power during the 'pleasure' of the President. In practice, however, the Council of Ministers must win the support of the Lok Sabha. If a President were to dismiss the Council of Ministers on his or her own initiative, it might trigger a Constitutional crisis. Thus, in practice, the Council of Ministers cannot be dismissed as long as it commands the support of a majority in the Lok Sabha.

The President is responsible for making a wide variety of appointments. These include

- Governors of States
- The Chief Justice, other judges of the Supreme Court and High Courts of India
- The Attorney General of India
- The Comptroller and Auditor General
- The Chief Election Commissioner and other Election Commissioners
- The Chairman and other Members of the Union Public Service Commission
- Ambassadors and High Commissioners to other countries

The President also receives the credentials of Ambassadors and High Commissioners from other countries.

The President is the Commander in Chief of the Indian Armed Forces.

The President of India can grant a pardon to or reduce the sentence of a convicted person for one time, particularly in cases involving punishment of death.

The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most other cases, however, the President exercises his or her executive powers on the advice of the Prime Minister and the cabinet.

## **Financial powers**

All money bills originate in Parliament, but only if the President recommends it. He or she causes the Annual Budget and supplementary Budget before Parliament. No money bill can be introduced in Parliament without his or her assent. The President appoints a finance commission every five years. Withdrawal from the contingency fund of India is done after the permission of President.

## **Judicial powers**

The President appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice. He/she dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present.

If they consider a question of law or a matter of public importance has arisen they can ask for the advisory opinion of the Supreme Court. They may or may not accept that opinion.

He/she has the right to grant pardon, to suspend, remit or commute the death sentence of any person.

He/she enjoys the judicial immunity:

- No criminal proceedings can be initiated against him/her during his term in office.
- He/She is not answerable for the exercise of his/her duties.

### **Basic terminologies used:**

1. Pardon: Completely absolves the guilt of the offender
2. Reprieve: Temporary suspension of the sentence
3. Respite: Awarding a lesser sentence on special ground
4. Remission: Reducing the amount of sentence without changing its character
5. Commutation: Substitution of one form a punishment for another form which is of a lighter character

### **Diplomatic powers**

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.

### **Military powers**

The President is the supreme commander of the defence forces of India. The President can declare war or conclude peace subject to the approval of parliament only under the decision of the Council of the Armed Forces Chief staffs, Military Secretary and President's Officer (Deputy Military Secretary). All important treaties and contracts are made in president's name.

### **Pardoning Powers**

As mentioned in Article 72 of Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- Punishment is for offence against Union Law
- Punishment is by a Military Court
- Sentence is a death sentence

### **Emergency powers**

The President can declare three types of emergencies: national, state and financial.

#### **National emergency**

National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), 1975 to 1977 (declared by Indira Gandhi on account of "internal disturbance").

Under Article 352 of the India Constitution, the President can declare such an emergency only on the basis of a written request by the Cabinet Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval, up to a maximum of three years.

In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended (Article 21)

The Parliament can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all money bills are referred to the Parliament for its approval. The term of the Lok Sabha can be extended by a period of up to one year, but not so as to extend the term of Parliament beyond six months after the end of the declared emergency.

## **State emergency**

State emergency, also known as President's rule, is declared due to breakdown of Constitutional machinery in a state.

If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the Constitution, he/she can declare a state of emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.

Under Article 356 of the Indian Constitution, it can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months. If the emergency needs to be extended for more than three years, this can be achieved by a Constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list (see National emergency for explanation). All money bills have to be referred to the Parliament for approval.

A State Emergency can be imposed via the following:

1. By Article 356 - If that state failed to run constitutionally i.e. constitutional machinery has failed
2. By Article 365 - If that state is not working according to the given direction of the Union Government.

This type of emergency needs the approval of the parliament within 2 months. This type of emergency can last up to a maximum of three years via extensions after each 6 month period. However, after one year it can be extended only if

1. A state of National Emergency has been declared in the country or in the particular state.
2. The Election Commission finds it difficult to organise an election in that state.

On 19 January 2009, President's rule was imposed on the Indian State of Jharkhand, making it the latest state where this kind of emergency has been imposed.

## **Financial emergency**

If the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, he/she can then proclaim a financial emergency, as per the Constitutional Article 360. Such an emergency must be approved by the Parliament within two months. It has never been declared. On a previous occasion, the financial stability or credit of India has indeed been threatened, but a financial emergency was avoided through the selling off of India's gold reserves.

A state of financial emergency remains in force indefinitely until revoked by the President.

The President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts, in case of a financial emergency. All money bills passed by the State legislatures are submitted to the President for approval. They can direct the state to observe certain principles (economy measures) relating to financial matters.

## **SELECTION PROCESS**

### **Eligibility**

Article 58 of the Constitution sets the principle qualifications one must meet to be eligible to the office of the President. A President must be:

- A citizen of India
- Of 35 years of age or above
- Qualified to become a member of the Lok Sabha

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Certain office-holders, however, are permitted to stand as Presidential candidates. These are:

- The current Vice President.
- The Governor of any State.
- A Minister of the Union or of any State (Including Prime Minister and Chief Ministers).

In the event that the Vice President, a State Governor or a Minister is elected President, they are considered to have vacated their previous office on the date they begin serving as President.

Under the Presidential and Vice Presidential act 1952, a candidate, to be nominated for the office of president needs 50 electors as proposers and 50 electors as seconders for his\her name to appear on ballot

### **Conditions for Presidency**

Certain conditions, as per Article 59 of the Constitution, debar any eligible citizen from contesting the presidential elections. The conditions are:

- The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
- The President shall not hold any other office of profit.
- The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- The emoluments and allowances of the President shall not be diminished during his term of office.

## **ELECTION PROCESS**

Whenever the office becomes vacant, the new President is chosen by an electoral college consisting of the elected members of both houses of Parliament, the elected members of the State Legislative Assemblies (Vidhan Sabha) and the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

The nomination of a candidate for election to the office of the President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Each candidate has to make a security deposit of ~15,000 (US\$299.25) in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled.

The election is held in accordance to the system of Proportional representation by means of Single transferable vote method. The Voting takes place by secret ballot system. The manner of election of President is provided by Article 55 of the Constitution.

Each elector casts a different number of votes. The general principle is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators. Also, legislators from larger states cast more votes than those from smaller states. Finally, the number of legislators in a state matters; if a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.

The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the electoral college. This number is the number of votes per legislator in a given state. For votes cast by those in Parliament, the total number of votes cast by all state legislators is divided by the number of members of both Houses of Parliament. This is the number of votes per member of either house of Parliament.

Although Indian presidential elections involve actual voting by MPs and MLAs, they tend to vote for the candidate supported by their respective parties.

### **Applicability of Anti Defection Laws**

Anti defection laws are not applicable for voting in Presidential Elections. Members of the electoral college are free to vote according to their conscience and are not bound to follow party whip. Since the election is by secret voting, political parties cannot identify the voting patterns easily.

## **CONSTITUTIONAL ROLE**

Article 53(1) of the Constitution vests in the President "the executive power of the Union", to be "exercised by him [sic] either directly or through officers subordinate to him" in accordance with the provisions of the Constitution. However, the Constitution also states that the Council of Ministers, headed by the Prime Minister, is "to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice".

However, the Article 74(2) bars all courts completely from assuming even an existence of such an advice. Therefore from the courts' point of view, the real executive power lies with the President. As far as President's decision and action are concerned no one can challenge such decision or action on the ground that it is not in accordance with the advice tendered by the Ministers or that it is based on no advice



## **GOVERNOR**

### **Powers and Functions of Governor:**

There shall be Governor for each State, Provided that nothing shall prevent the appointment of the same person as Governor for two or more States.

### **Executive power of State:**

1. The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

### **Appointment of Governor.:**

The Governor of a State shall be appointed by the President by warrant under his hand and seal. (Article 155)

### **Term of office of Governor:**

- (1) The Governor shall hold office during the pleasure of the President.
- (2) The Governor may, by writing under his hand addressed to the President, resign his office.
- (3) Subject to the foregoing provisions of this article, a Governor shall hold for a term of five years from the date on which he enters upon his office.
- (4) Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. (Article 156)

### **Qualifications for appointment as Governor:**

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years. (Article 157)

### **Conditions of Governor' office:**

- (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- (2) The Governor shall not hold any other office of profit. (Article 158)

### **Discharge of the functions of the Governor in certain contingencies:**

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for (Article 160).

### **Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases:**

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. (Article 161).

## **Extent of executive power of State:**

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. (article 162)

## **CONCEPT OF FEDERALISM**

The term 'Federalism' originate From the Latin word "Foedus" meaning 'treaty' or 'covenant'. Some free states bound together by agreement constitute a Federal-state.

Federalism is a system of government of a country under which there exist simultaneously a federal or central government (legislature & executive) & several state legislatures & government as contrasted with a unitary state both federal & state governments derive their powers from the federal-constitution both are supreme in particular sphere & both operate directly on the people.

### **Definition**

Federation is a political-concept in which a group of members are bound together by 'covenant' with a governing representative head.

A system of National-government in which power is divided between a central authority & a number of regions which delimited self-governing authority.

A system of governance in which distribution of power of constituent-units is ensured by a written-Constitution, having independent judiciary to resolve, state of local-levels. Under the principal of government, power & authority is allocated between the national & local-government units, such that each unit is delegated a sphere of power & authority only it can exercise while other powers must be shared.

### **Constitutional-Intent**

Being aware that notwithstanding a common cultural heritage, without political unity, the country would disintegrate under the pressure of Fissiparous forces, the constituent Assembly addressed itself to the immensely complex-task of devising a union with a strong centre. In devising the pattern of the central -state relations they were influenced by the Constitution of Canada & Australia which have a parliamentary-form of government. The Government of India act, 1935 was also relied upon significant changes. The Constitution cannot be called 'Federal' or 'Unitary' in the ideal-sense of the terms.

According to article 1 of the Constitution:

"India, i.e. Bharat will be the Union of States".

The Constitution, thus postulated India as a union of states & the consequently, the existence of Federal-structure of governance for this union of states becomes a basic structure of the union of India.

### **Necessity of Federalism:**

#### **(i) Emergence of different-set of states:**

Before independence, the earliest form of political-organization was not federal but unitary. But after independence, the pressure of economic, political & social-circumstances which compelled unitary-states (generally Monarchical) to enter into alliance with other states for meeting common problems which initially related to 'defence'. Require a special-type of government which leads to federalism.

## **(ii) Scientific-development:**

Scientific & technological-developments & increased economic interdependence have changed the scenario of the past, which brought the emerging-states (independent) on the same- platform. The exchange of Scientific-technologies between the development of these states. Scientific & technological-development brought a revolution during the era of federalism.

## **(iii) End of British-Colonies:**

In India, the historical-process to create the federal-system was different. For long, before 1935, British India has been administered on a unitary basis. There existed a unitary-system. But after the end of British-colonies, the unitary system was replaced by a federal-system. The present federal-system was built on the foundation of the 1935 system.

The past history of India establishes that in the absence of a strong Central-Government. the country soon disintegrates. This belief was strengthened by the recent-portion of the country. Therefore adequate precautions have to be taken against any such future contingency by making the centre strong in Indian-Federalism.

## **Components of a Federal-Constitution:**

The legal-test of federalism, when analyzed, leads to the following broad features of a federal-Constitution.

### **(i) Distribution of powers (Dual-polity):-**

An essential feature of every federal-Constitution is the distribution of powers between the central-government & the governments of the several-units forming the federations.

Federation means the distribution of the power of the state among a number of coordinate bodies, each originating in and controlled by the Constitution. (Dicey)

### **(ii) Written-Constitution:**

A federal-state derives its existence from the Constitution, just as a corporation derives its existence from the grant or statute by which it is created. Every power (executive, legislature or judicial) whether it belongs to the central, or to the component-states, is subordinated to & controlled by the Constitution. Therefore, a federal-state requires a written-Constitution for the obvious reason that in order to be workable & stable & the limitations, must be precisely defined by written-instrument.

### **(iii) Supremacy of the Constitution:**

This means that the Constitution should be binding on the federal & state-government. Neither of the two governments should be in a position to override the provisions of the Constitution relating to the power and status which each is to enjoy.

### **(iv) Rigidity of the Constitution: - (Non unilateral change)**

A natural corollary of a written-Constitution is its rigidity. A Constitution which is the supreme-law of the land must also be rigid. In a rigid Constitution, the procedure of amendment is very complicated & difficult. This does not mean that the Constitution should be legally unalterable. The Constitution provides a process for changing its provisions called "Amendment". It simply means that the procedure of amending the Constitution should not remain exclusively with either the centre or state-Governments means "No Unilateral-change".

### **(v) Authority of the courts (Interpretation by Judiciary) :**

The distribution of powers made by the Constitution must be guarded by the judiciary. Which is to interpret the Constitution as the 'Fundamental-law' of the lands to enforce its provisions against both the federal and Regional-governments and to invalidate any of their acts which transgresses the limitations imposed upon them by the Constitution.

## Distinctive Federation

The federal polity, which our Constitution establishes, contains, as compared with other federal constitutions, several distinctive features. These are:

- (1) No Dual citizenship
- (2) Single-Constitution
- (3) In emergencies the Constitution can become Unitary
- (4) Minimizes Rigidity & Legalism:

## Legislative Relations

**Article 245** {Extent of laws made by Parliament and by the Legislatures of States}

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

**Article 246** {Subject-matter of laws made by Parliament and by the Legislatures of States} Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

**Article 247** {Power of Parliament to provide for the establishment of certain additional courts}

Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

**Article 248** {Residuary powers of legislation}

Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

**Article 249** {Power of Parliament to legislate with respect to a matter in the State List in the National interest}

Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

**Article 250** {Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation}

Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

**Article 251** {Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the legislatures of States}

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

**Article 252** {Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State}

If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

**Article 253** {Legislation for giving effect to international agreements}

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

**Article 254** {Inconsistency between laws made by Parliament and laws made by the Legislatures of States}

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

**Article 255** {Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only}

No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given -

- where the recommendation required was that of the Governor, either by the Governor or by the President;
- where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
- where the recommendation or previous sanction required was that of the President, by the President.

## **Administrative Relations**

**Article 256** {Obligation of States and the Union}

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may, appear to the Government of India to be necessary for that purpose.

**Article 257** {Control of the Union over States in certain cases}

The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance: Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

**Article 257 A** {Assistance to States by deployment of armed forces or other forces of the Union}

**Article 258** {Power of the Union to confer powers. etc .. on States in certain cases}

Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

**Article 258A** {Power of the States to entrust functions to the Union}

Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the exclusive power of the State extends.

**Article 259** {Armed Forces in States in Part B of the First Schedule}

**Article 260** {Jurisdiction of the Union in relation to territories outside India}

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

**Article 261** {Public acts. records and judicial proceedings}

### **Administrative relations between Centre and State**

Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

**Article 262** {Adjudication of disputes relating to waters of inter-State rivers or river valleys} Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

**Article 263** {Provisions with respect to an inter-State Council}

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of -

- inquiring into and advising upon disputes which may have arisen between States;
- investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

## **PASSING OF BILLS**

### **Provisions as to introduction and passing of Bills:**

- (1) Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.
- (2) Subject to the provisions of Article 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed by both Houses.
- (3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.
- (4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.
- (5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the council of States, shall subject to the provisions of Article 108, lapse on a dissolution of the House of the People. (Article 107)

### **Joint sitting of both Houses in certain cases:**

- (1) If after a Bill has been passed by one House and transmitted to the other House
  - (a) the Bill is rejected by the other House; or
  - (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
  - (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it. the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

- (2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause © of that clause is prorogued or adjourned for more than four consecutive days.



- (3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.
- (4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that a joint sitting -

- (a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;
  - (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.
- (5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein. (Article 108)

#### **Special procedure in respect of Money Bills:**

- (1) A Money Bill shall not be introduced in the Council of States.
- (2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the house of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.
- (3) If the House of the People accepts any of the recommendations of the council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the council of States and accepted by the House of the People.
- (4) If the House of the People does not accept any of the recommendations of the council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.
- (5) If a Money Bill passed by the House of the People and transmitted to the council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People. (Article 109)

### **Definition of “Money Bill”:**

- (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely -
  - (a) the imposition, abolition, remission, alteration or regulation of any tax;
  - (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
  - (c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
  - (d) the appropriation of moneys out of the consolidated Fund of India;
  - (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
  - (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
  - (g) any matter incidental to any of the matters specified in sub-clause (a) to (f).
- (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- (3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.
- (4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Article 109, and when it is presented to the President for assent under Article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill. (Article 110)

### **Assent to Bills:**

When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom.

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

### **Procedures in Financial Matters (Article 111)**

#### **Annual financial statement.-**

- (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the “annual financial statement”.

- (2) The estimates of expenditure embodied in the annual financial statement shall show separately-
  - (a) the sums required to meet expenditure described by the Condition as expenditure charged upon the Consolidated Fund of India; and
  - (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India, and shall distinguish expenditure on revenue account from other expenditure.
- (3) The following expenditure shall be expenditure charged on the Consolidated Fund of India-
  - (a) the emoluments and allowances of the President and other expenditure relating to his office;
  - (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
  - (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
  - (d)
    - (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,
    - (ii) the pensions payable to or in respect of Judges of the Federal Court,
    - (iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or that any time before the commencement of this Constitution exercises jurisdiction in relation to any area included in a Governor's Province of the Dominion of India;
  - (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor- General of India;
  - (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
  - (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged. (Article 112)

**Procedure in Parliament with respect to estimates.-**

- (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.
- (2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.
- (3) No demand for a grant shall be made except on the recommendation of the President. (Article 113)

### **Appropriation Bills:**

- (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet-
  - (a) the grants so made by the House of the People; and
  - (b) the expenditure charged on the Consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.
- (2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.
- (3) Subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article. (Article 114)

### **Supplementary, additional or excess grants:**

- (1) The President shall-
  - (a) If the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
  - (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
- (2) The provisions of Articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant. (Article 115)

### **Votes on account, votes of credit and exceptional grants:**

- (1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power-
  - (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;
  - (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stand with the details ordinarily given in an annual financial statement;

- (c) to make an exceptional grant which forms no part of the current service of any financial year; and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.
- (2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure. (Article 116)

### **Special provisions as to financial Bills:**

- (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:  
Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.
- (2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- (3) A Bill which, if enacted and brought into operation, would involve expenditure from the consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill. (Article 117)

## **JUDICIARY:**

### **Establishment and Constitution of Supreme Court:**

- (1) There shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:  
Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:
  - (a) a Judge may, by writing under his hand addressed to the President, resign his office;
  - (b) a Judge may be removed from his office in the manner provided in clause (4).
- (2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.
- (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-
  - (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
  - (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
  - (c) is, in the opinion of the President, a distinguished jurist.

- (4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.
- (5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).
- (6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.
- (7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

#### **Salaries, etc., of Judges:**

- (1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.
- (2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. (Article 125)

#### **Appointment of acting Chief Justice:**

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason or absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose. (Article 126)

#### **Appointment of ad-hoc Judges:**

- (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.
- (2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court. (Article 127)

### **Original jurisdiction of the Supreme Court:**

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute. (Article 131)

### **Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases:**

- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as the interpretation of this Constitution.
- (2) Omitted.
- (3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

**Explanation:** For the purposes of this article, the expression “final order” includes an order declaring an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case. (Article 132)

### **Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters:**

- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A-
  - (a) that the case involves a substantial question of law of general importance and
  - (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.
- (2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.
- (3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court. (Article 133)

### **Appellate jurisdiction of Supreme Court in regard to criminal matters:**

- (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

Certifies under Article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require.

- (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law. (Article 134)

### **HIGH COURT**

There shall be a High Court for each State.

#### **High Courts to be courts of record:**

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. (Article 215)

#### **Constitution of High Courts:**

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. (Article 216)

#### **Appointment and conditions of the office of a Judge of a High Court:**

- (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the chief Justice, the chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years.

Provided that -

- a) a Judge may, by writing under his hand addressed to the President, resign his office;
  - (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;
  - (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.
- (2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and -
    - (a) has for at least ten years held a judicial office in the territory of India; or
    - (b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession; (Article 217)



## EMERGENCY PROVISION

### NATIONAL EMERGENCY

As it is very clear from the opening words of the above stated heading, national emergency deals with constitutional provisions to be applied, whenever there are imbalance in the society in the whole country and not in a particular or specific region or state.

Art. 352 reads that-

**352. Proclamation of Emergency:** (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

**Explanation:** A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.

Provisions have been made in the Constitution for dealing with extraordinary situations that may threaten the peace, security, stability and governance of the country or a part thereof.

The Constitution of India has provided for imposition of emergency caused by war, external aggression or internal rebellion. This is described as the National Emergency. This type of emergency can be declared by the President of India if he is satisfied that the situation is very grave and the security of India or any part thereof is threatened or is likely to be threatened either, by war or external aggression by armed rebellion within the country. The President can issue such a proclamation even on the ground of threat of war or aggression. According to the 44th Amendment of the Constitution, the President can declare such an emergency only if the Cabinet recommends in writing to do so.

Title of the topic basically talks about two main and important factors of Indian Constitution of India i.e. "Emergency provision & fundamental rights"

When the Constitution of India was being drafted, India was passing through a period of Stress and strain. Partition of the country, communal riots and the problem concerning the Merger of princely states including Kashmir. Thus, the Constitution-makers thought to Equip the Central Government with the necessary authority, so that, in the hour of emergency, When the security and stability of the country is threatened by internal and external threats. Therefore, some emergency provisions were made in Constitution to safeguard and protect the security, integrity and stability of the country and effective functioning of State Governments.

**Emergency provision falls in PART-XVIII of the Constitution of india from Art. 352 to Art. 360**

1. National emergency (Article 352 of the Constitution of India)
2. State emergency (Article 356 of the Constitution of India)
3. Financial emergency (Article 360 of the Constitution of India)

### COMPTROLLER AND AUDITOR GENERAL OF INDIA

In 1860, the first Auditor General of India was appointed and he looked after both audit and accounts functions. A statutory independent status was given to the Auditor General with the passing of the Government of India Act, 1919. Under the subsequent Government of India Act, 1935, the position of the Auditor General was further enhanced. He was appointed by the Governor General and could be removed from office in the same manner as a Judge of the Federal Court. The duties and powers of the Auditor General were regulated by the Government of India Audit and Accounts Order, 1936 which continued till 1971 when the Comptroller and Auditor General's (Duties, Powers, Conditions of Service) Act, 1971 was passed by Parliament under the Constitution of India which came into effect from January 26, 1950. Under the Constitution, the former Auditor General of India was designated as Comptroller

and Auditor General of India (CAG). The duties of the CAG related to audit and accounts of the Union Government and the State governments. In 1976, the CAG was relieved of the responsibility of compiling and keeping accounts of the Union Government but not of the State governments. The accounts of the States are still compiled and kept by the State Accountants General under the CAG and have not been taken over by the States.

Public audit of Central and State governments was restricted to regularity audit to see whether laws, rules and regulations were complied with in handling funds and to financial audit to see whether the financial statements of accounts presented a fair and correct state of affairs of the government with reference to vouchers and other initial records of accounts.

In the 1960s, the area of audit was extended from expenditure audit to revenue audit which was included in the CAG's (DPCS) Act, 1971 also later. From the 1970s the CAG undertook performance audit (value for money audit) of various development programmes/schemes/projects and of government organisations with due regard to economy, efficiency and effectiveness. The audit of the Public Sector Enterprises (PSEs) came under the purview of the CAG by a suitable provision in the Indian Companies Act or by a provision in the Act setting up a Corporation. A system of performance appraisals of the PSEs was introduced in 1970 through the Audit Board. Autonomous bodies substantially financed by the government are also within the ambit of audit by the CAG under the Act of 1971.

Under Articles 148 to 151 of the Constitution, the independence of the CAG is ensured, his salaries and allowance and the administrative expenses of his office, including salaries of officers and staff, are charged on the Consolidated Fund of India. He submits his reports as a result of audit to the President/Governor of the State who causes them to be laid before Parliament/the State Legislature as the case may be. These reports are remitted to the Central/State PACs which has to examine them. The members of the PAC, both at the Centre and States, have no time to examine all paras and reviews of the audit reports and therefore a selective approach is adopted to examine them.

The existing duties of the CAG enjoin on him to audit the Central/State expenditure and revenue and to submit audit reports. The tremendous work done by the CAG and his officers in auditing and producing audit reports is rendered infructuous as the PACs have no time to examine them. Even in respect of the few paras and reviews examined by the PAC, adequate action is not taken by the government. No adequate action is taken on paras not selected by the PAC.

The CAG of India is the CAG of the Union Government and also of the States. The State Accountant General (AG) under the CAG does not have any legal status. The book suggests that the State AG should be given the legal status equivalent to a Judge of the High Court, even though working within the general superintendence of the CAG of India as in other countries like the USA, Germany, Canada, Australia and the UK which have separate Auditor Generals in provinces. This suggestion is in line with the provision in the 1935 Act and in the original draft of Constitution and the recommendation of the National Commission to Review the Working of the Constitution (NCRWC).

The Constitution does not lay down any qualifications for the appointment of the CAG of India and also does not prescribe any procedure for making the appointment except that the CAG shall be appointed by the President of India by a warrant under his hand and seal. The book advocates the laying down of qualifications for such appointment and only persons with vast experience in audit and accounts and finance in government should be eligible to hold this high office as was intended in the debates in the Constituent Assembly in this matter in 1949. Further, the appointment should be made on the recommendation of an independent Committee which should include the Speaker of the Lok Sabha, the Chairman of the Central PAC and the Leader of the Opposition in the Lok Sabha as its members. In the UK the appointment of the CAG is ratified by the House of Commons on the recommendation of the PM made in agreement with the Chairman of the PAC and the CAG is made an officer of the House of Commons.

## **THE ELECTION COMMISSION OF INDIA**

The Election Commission of India is an autonomous, constitutionally established federal authority responsible for administering all the electoral processes in the Republic of India. Under the supervision of the commission, free and fair elections have been held in India at regular intervals as per the principles enshrined in the Constitution. Election Commission of India is a permanent body governed by rules specified in the Constitution. The Election Commission was established on 25th January 1950. The Election Commission has the power of superintendence, direction and control of all elections to parliament and the state legislatures and of elections to the office of the President and Vice-President.

The commission consists of a Chief Election Commissioner (CEC) and two Election Commissioners, appointed by the president of India. Two additional Commissioners were appointed to the commission for the first time on 16th October 1989 but they had a very short tenure till 1 st January 1990. Later, on 1 st October 1993, two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote. The current CEC is V Sundaram Sampath.

The Chief Election Commissioner can be removed from his office by Parliament with two-thirds majority in Lok Sabha and Rajya Sabha on the ground of proved misbehaviour or incapacity. The Election Commission consists of a Chief Election Commissioner and such other Commissioners as the President may, from time to time, fix. Other Election Commissioners can be removed by the President on the recommendation of the Chief Election Commissioner. The Chief Election Commissioner and the two Election Commissioners draw salaries and allowances at par with those of the Judges of the Supreme Court of India as per the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Rules, 1992.[3] All three commissioner have equal rights of decision making.

Follow the Constitutional duties for conducting the free, fair and peaceful elections to the Parliament and the State Legislatures under Article 324 of the Constitution of India.

### **Chief Election Commissioner of India**

The Chief Election Commissioner heads the Election Commission of India. The President of India appoints the Chief Election Commissioner and two Election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

The decisions of the Commission can be challenged in the High court of India and the Supreme Court of India by appropriate petitions. By long standing convention and several judicial pronouncements, once the actual process of elections has started, the judiciary does not intervene in the actual conduct of the polls. Once the polls are completed and result declared, the Commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

## **PUBLIC SERVICE COMMISSION**

Indianisation of the superior Civil Services became one of the major demands of the political movement compelling the British Indian Government to consider setting up of a Public Service Commission for recruitment to its services in the territory. The first Public Service Commission was set up on October 1 st, 1926. However, its limited advisory functions failed to satisfy the people's aspirations and the continued stress on this aspect by the leaders of our freedom movement resulted in the setting up of the Federal Public Service Commission under the Government of India Act 1935. Under this Act, for the first time, provision was also made for the formation of Public Service Commissions at the provincial level.

The Constituent Assembly, after independence, saw the need for giving a secure and autonomous status to Public Service Commissions both at Federal and Provincial levels for ensuring unbiased recruitment to Civil Services as also for protection of service interests. With the promulgation of the new Constitution for independent India on 26th January, 1950, the Federal Public Service Commission was accorded a constitutional status as an autonomous entity and given the title - Union Public Service Commission

### **Constitutional Provisions**

The Union Public Service Commission has been established under Article 315 of the Constitution of India. The Commission consists of a Chairman and ten Members. The terms and conditions of service of Chairman and Members of the Commission are governed by the Union Public Service Commission (Members) Regulations, 1969. The Commission is serviced by a Secretariat headed by a Secretary with two Additional Secretaries, a number of Joint Secretaries, Deputy Secretaries and other supporting staff. The Union Public Service Commission have been entrusted with the following duties and role under the Constitution:

- Recruitment to services & posts under the Union through conduct of competitive examinations;
- Recruitment to services & posts under the Central Government by Selection through Interviews;
- Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
- Advising the Government on all matters relating to methods of Recruitment to various services and posts;
- Disciplinary cases relating to different civil services; and
- Miscellaneous matters relating to grant of extra ordinary pensions, reimbursement of legal expenses etc.

The major role played by the Commission is to select persons to man the various Central Civil Services and Posts and the Services common to the Union and States (viz. All-India Services).

### **EXPENSES OF PUBLIC SERVICE COMMISSIONS**

The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

### **The Duties & Role of the Commission**

Under Article 320 of the Constitution of India, the Commission are, inter-alia, required to be consulted on all matters relating to recruitment to civil services and posts.

**RECRUITMENT is made by one of the following three methods:**

**Direct Recruitment, Promotion and Transfer**

Under Article 320(3) of the Constitution the Commission are required to be consulted on the quantum of penalties in disciplinary cases affecting a person serving under the Government of India in a Civil Capacity. Article 321 also empowers the Parliament to extend the functions of the Public Service Commission to any local authority or other body corporate constituted by Law or by any public institutions.

The Commission have a duty, under Article 323 of the Constitution to present annually to the President a Report as to the work done by the Commission and on receipt of such report, the president shall cause a copy there of together with the Memorandum explaining, as respect the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of the Parliament.

The Constitution of India is not an end, but a means to an end, not mere democracy as a political-project but a socio - juristically process which opens up through a humanist, radical social-order, the opportunity to unfold the full personhood of every citizen.

**Freedom of Trade, Commerce and Intercourse**

The Constitution of India in Part XIII, wide Articles 301 to 305, deals with freedom of Trade, Commerce and Intercourse. Out of these articles, Article 301 creates an overall limitation on all legislative powers of the Union and the State legislature. The bar on state powers to interfere in the free trade, commerce and intercourse (Article 301) is loosened by Article 302,303 and 304. Article 305 provides for state monopoly.

Study of the Articles 302 to 305 will reveal when and how the Constitution of India permits the government to restrict freedom of trade, commerce and intercourse.

**Article 301:** The trade and commerce throughout the territory of India shall be free and without restriction. The restriction can generally may be way of taxes. The taxes may be compensatory where they are levied for any service provided it is not taken as restriction.

But if the tax is levied to regulate or to prevent certain people from carrying on business, it amounts to restriction.

Thus the object of Article 301 is to break down the barriers between the states and to make the country as one unit with a view to encourage trade and commerce.

**Article 302:** However, the Parliament can impose restrictions on freedom of trade commerce and intercourse in public interest.

**Article 303:** The Parliament while imposing restrictions under Article 302, cannot discriminate between different state. However, the parliament can discriminate in case of scarcity of goods.

**Article 304:** It enables state legislature to impose taxes on goods coming from other states, if goods produced within the state are subjected to such taxes.

**Article 305:** Any law passed by the Union thereby creating the state monopoly shall not be affected by the provision of Part XIII of the Constitution of India.

**Amendment Procedure:**

Amendment refers to the process of effecting desired change (s) in the Constitution. It may involve alteration, revision, addition, repeal, variation or deletion of any provision of the Constitution.

The framers of our Constitution did not want to make the Constitution a finite or infallible document. They favoured a flexible Constitution admitting of change and growth. If a Constitution is very rigid, it would not grow. And a Constitution which would not grow would be a bad Constitution.

A Constitution has to keep pace with the changing times. Our founding fathers, therefore, produced a Constitution which is partly rigid and partly flexible. Our Constitution combines rigidity as well as flexibility. This becomes clear as we analyse the procedures of amending the Constitution.

**Article 368 of the Constitution of India provides for three procedures of amendments.**

**1. First Procedure:**

Some provisions of the Constitution can be amended by simple majority in both Houses of the Parliament. The matters covered by such amendments are the followings:

- (a) Articles 2,3 and 4 providing for admission or establishment of new states! Alteration of areas, names and boundaries of existing states;
- (b) Articles 5, 6, 7, 9, 10 and 11 dealing with citizenship;
- (c) Article 81 dealing with delimitation of constituencies;
- (d) Article 100 dealing with quorum of Parliament; (e) Article 106 relating to the privileges of MPs;
- (f) Article 124 (1) relating to the appointment of the Judges of the Supreme Court;
- (g) Art. 164 dealing with the abolition and creation of Legislative Council of a state;
- (h) Art. 240 concerning the legislatures of union territories;
- (i) Art. 312 relating to the creation of All India Services;
- (j) Art. 327 dealing with the election system of the country;
- (k) II, V and VI schedules of the Constitution.

**2. Second Procedure:**

The second category consists of constitutional amendments. The constitutional amendments require a special procedure and a special majority in each House of the Parliament. A bill for constitutional amendment can be introduced in either House of the Parliament. It has to be passed by a majority of the total membership of the House in which it is introduced.

Further, it has to be passed by not less than the two-thirds majority of the members present and voting. After it is passed in the House in which it was introduced, it has to be passed in the similar manner in the other House.

After the bill is passed in both Houses in the special procedure and with special majority, it is sent to the President for his assent and according to the 24th Amendment, the President is bound to give his assent to all such bills.

With the assent of the President accorded, the bill becomes a part of the Constitution and the Constitution thus gets amended. Majority of the provisions of the Constitution can be amended in this way. This amending procedure achieves a balance between flexibility and rigidity.

### 3. Third Procedure:

The third category of amendment involves a rigid procedure. It has two stages. Firstly, the bill for amendment is to be passed in each House of Parliament in the special manner and with a special majority. It has to be passed by a majority of the total membership of each House of the Parliament.

Further, it has to be passed by a majority not less than two-thirds of all the members present and voting in each House of the Parliament. Secondly, after the bill is passed by each House of the Parliament, it is to be ratified by the legislatures of at least one-half of the states. Thereafter it is sent to the President for his approval.

The matters which require this rigid procedure of amendment are election of President (Article 54 and Article 55), the extent of the executive power of the Union (Article 37), extent of executive power of the state (Article 162), High Courts for Union Territories (Article 241), Union Judiciary (Chapter IV of Part V), High Courts in states (Chapter V of Part VI), Legislative Relations between state and centre (Chapter I of Part XI), three lists of subjects in VII Schedule, representation of states in the Parliament, and procedure of Constitutional Amendments (Article 368).

#### **'Basic Structure' of Constitution, Not Amendable:**

In the Golaknath Case of 1967, the Supreme Court observed that the parliament had no right to amend any of the provisions or parts of the Constitution relating to the fundamental rights. However, in the Kesavananda Bharati Case of 1972, the Supreme Court took a different view. The Court said that the parliament had power to amend any provision of the Constitution except the 'basic features' of the Constitution.

The 42nd Amendment Act, 1976 said that the parliament had power to amend any provision of the Constitution and that such amendments could not be questioned in any Court of Law. But in the Minerva Mills Case of 1980 the Supreme Court again asserted that the parliament could not amend the 'basic structure' of the Constitution.

#### **Article 286 :**

Restrictions as to imposition of tax on the sale or purchase of goods

1. No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place
  - a. outside the State; or
  - b. in the course of the import of the goods into, or export of the goods out of, the territory of India
2. Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)
3. Any law of a State shall, in so far as it imposes, or authorizes the imposition of,
  - a. a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or
  - b. a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause (d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

Article 286 , which imposes certain restrictions on the power of the State to impose sales tax, on goods was amended in 1956 by the Constitution (Sixth Amendment) Act, under which taxes on sale or purchase of goods in the course of inter-state trade or commerce were brought expressed within the purview of the legislative jurisdiction of parliament.

In Bengal Immunity Co. v. State of Bihar, AIR 1955 SC661, the Supreme Court held that state is not competent to impose tax on inter-state trade. In Tata Iron and steel Co. v. State of Bihar, AIR 1958 SC 452 it was held by the Supreme court that doctrine of nexus does not impose the tax and it only indicates the circumstances in which a tax is imposed by the legislature. It is important to note that sale or purchase must occasion the movement of goods from one state to another. Parliament is empowered in relation to the goods declared to be of special importance in inter - State trade or commerce to lay down the restrictions and conditions subject to which an State law may regulate the tax on sales or purchases of such goods in the state.

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# 2. COMPANY LAW

## Introduction :

### Definition and Meaning of a Company

A Company is one of the forms of business organization. It is a voluntary association of persons and is formed for certain common purposes. Its capital is raised by selling shares and the persons holding such shares are known as shareholders. Liability of shareholders is limited to the extent of the shares they hold. A Company is an artificial person with a perpetual succession and a common seal.

### Main Features or Characteristic of a Company

Following are the main features or characteristics of a company:

- (a) An Incorporate Association.
- (b) Separate Legal Entity.
- (c) An Artificial Person but not a Citizen.
- (d) Perpetual Succession.
- (e) Common Seal.
- (f) Separate Name.
- (g) Limited Liability.
- (h) Separation of Ownership and Management.
- (i) Transferability of Shares.
- (j) Separate Property.
- (k) Number of Members.
- (l) Shareholders are actual owners.
- (m) Raising of Capital on the large scale.
- (n) Capacity to Sue.
- (o) Rigidity of Objects.
- (p) Statutory Requirements.
- (q) Company is Body Corporate.

### Important Types of Companies

Companies can be classified into various types on different basis.

- (1) Classification of Companies on the basis of Liability.
  - (a) Companies Limited by Shares.
  - (b) Companies Limited by Guarantee.
  - (c) Unlimited Companies:

### **Classification of companies on the basis of Mode of Incorporation:**

- (a) Chartered Companies: Chartered Companies are also known as Royal Charter. Such Companies are incorporated under the Royal (special) Charter granted by the King or the Queen. Such companies are given exclusive powers, rights and privileges under the royal charter and therefore, they have to function in accordance with the terms and conditions of the royal charter. The East India Company, Bank of England, the Chartered Bank of Australia are some of the examples of chartered or Royal companies. However, such Companies find no place in India after her independence, since there is no monarchy in India.
- (b) Statutory Companies.
- (c) Registered Companies under the Act.

### **Classification of Companies based on the Basis of Ownership:**

#### **(a) Private Company:**

Section 2(68) defines a private company as follows - "Private company" means a company which has a minimum paid up capital of Rupees one lacs or such higher paid up capital as may be prescribed, and be its Articles -

- (a) restricts the right to transfer its shares, if any,
- (b) limits the number of its members to two hundred (except in case of one person company )
- (c) prohibits any invitation to the public to subscribe for any securities of the company.

#### **(b) Public Company:**

The Companies Act in 2013, defines "Public Company" means a company which -

- (a) is not a private company',
- (b) has a minimum paid-up capital of Five lakh rupees or such higher paid-up capital as may be prescribed',
- (c) is a private company which is a subsidiary of a company which is not bring a private company. Thus, Section implies that any private company which is a subsidiary of a public company is also treated as a public company.

#### **(c) Government Company:**

Section 2(45) of the Companies Act of 2013.

### **Classification of Companies on the basis of Control and or share holding:**

Companies can be classified on the basis of control as (a) Holding Companies and (b) Subsidiary companies.

#### **(a) Holding Company:**

Section 2 (46) of the Companies Act of 2013 implies that a company is deemed to be holding company of another if that other is its subsidiary. Thus, a holding company can be defined as a company which has a control over a subsidiary company through anyone of the several methods as explained in Section 4 (1).

#### **(b) Subsidiary Company:**

A company is a subsidiary of a holding company if a holding company controls composition of its board of directors, or exercises or contro;s more than one - haif of total share capital either on its own or together with one or more of its subsidiary companies.

## **FORMATION OR INCORPORATION OF A COMPANY**

### **(a) Formation**

A company having share capital is not to commence its business unless it has satisfied the following requirements .

A Declaration has to be filed by Director with Register with prescribed form.

### **(b) Registration:**

For the purpose of the registration of a company, an application is required to be done to the Registrar of the companies as per the provisions companies Act 2013.

### **(c) Floatation and raising of Capital:**

After completing the legal formalities required for registration, a company goes for raising the sufficient capital to commence and carry on its business.

### **Procedure of a Registration of a Company:**

#### **(i) Mode of forming Incorporated Company:**

Any seven or more persons, or where the company to be formed will be a private company, any two or more persons (Except one person company) associated for any lawful purpose may by subscribing their names to a memorandum of Association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

#### **(ii) Certificate of incorporation:**

When the documents required for registration are filed with the Registrar of Companies and if the Registrar is satisfied and convinced that all the statutory requirements regarding the registration have been duly complied with., he registers all necessary documents i.e. memorandum, articles etc. and issues a certificate of incorporation under his hand.

Certificate of incorporation is very important document which certifies that the company has been registered with the Registrar of Companies under the Companies Act , on a particular date. as and from that date of the issue of the certificate of incorporation, the company obtains a legal status and an distinct corporate personality.

A certificate of incorporation is a conclusive evidence that all requirements of the Companies Act, in respect of registration of the company have been Though the certificate of incorporation is conclusive for the purpose of incorporation, it does not make an illegal object of a company legal one.

### **Conclusiveness of certificate of incorporation:**

A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under this Act.

## **CORPORATE PERSONALITY AND LIFTING OR PIERCING THE CORPORATE VEIL:**

The advantage of incorporation, particularly of separate artificial and distinct entity, is allowed to be enjoyed only by those who do not make dishonest and fraudulent use of their company. It has been noted that the company is a separate legal entity different from its members. It has independent legal existence. Its assets are not the assets of its members, nor is its liability or the debts to be discharged by the members.

In Salomon v. Salomon and Company Ltd. Case (1897 A.C. 22), the Court held that Saloman as an individual was distinct from Saloman and Company and therefore, he could be a secured creditor of the company even though he held the majority of shares.

In Lee v. Lee Air Farming Ltd., (1961) AC 12 it was held that 'L' was a separate person distinct from the company hence compensation was due to the widow

The Character of a body corporate was explained by the Supreme Court in Tata Engineering And Locomotive v. State Of Bihar And Other 1965 AIR 40, 1964 SCR (6) 885

In Naga Brahma Trust v. Translanka Air Travels P. Ltd. It has been held that shareholders and the company are entirely different persons

The corporate veil may be lifted in the following instances.

The Corporate veil may be lifted under two circumstances. They are:

- 1) Under Statutory Interpretation
- 2) Under Judicial Interpretation

### **Corporate Veil may be lifted under Judicial Interpretation under the following circumstances:**

1. To prevent fraud or improper conduct.
2. When the company is a mere cloak or sham (Unlawful act)
3. Evasion of Tax or avoiding welfare legislation
4. Under the authority of statute.
5. To Study the Legal character of the company
  1. Fraud or Improper conduct: When the corporate personality is used as an instrument of fraud, the doctrine of piercing the corporate veil may be applied in the interest of justice.  
P.N.B. Finance Ltd. V. Shital Prasad Jain (1983) 54 corp, cas.66 In Jones v. Lipman case (1962, All ER. 342),
  2. When the company is a mere cloak or sham (Unlawful act)
  3. Evasion of Tax or avoiding welfare legislation  
In Sir Dinshaw Manekaji Petit case (Re. AIR 1927 - Bombay - 371).
  4. Under the authority of statute.  
In LIC of India v. Escorts Ltd. (AIR 1986 SC 1370)
  5. To Study the Legal character of the company:  
In times of war the court may ignore the place of registration of the company and lift the corporate veil to see whether the company is being controlled by enemy aliens or not and determine the enemy character of the company by that.  
In Daimler Company v. Continental Tyre and Rubber Company Ltd. Case (1916 - 2 A. C. 307J,

## **PROMOTER**

Refers to the entire process by which a company is brought into existence. It starts with the conceptualisation of the birth a a company and determination of the purpose for which it is to be formed. The persons who conceive the company and invest the initial funds are known as the promoters of the company ..

The promoters have certain basic duties towards the company formed :-

1. He must not make any secret profit out of the promotion of the company. Secret profit is made by entering into a transaction on his own behalf. *Gluckstein v. Barnes* (1900) AC240
2. He cannot sell concerned property to the company at a profit without making disclosure of the profit to the company or its members. *Erlanger v. N. S. Phosphate Company*—The promoter can make profits in his dealings with the company provided he discloses these profits to the company and its members. What is not permitted is making secret profits i.e. making profits without disclosing them to the company and its members.
3. He must make full disclosure to the company of all relevant facts including to any profit made by him in transaction with the company.

In case of default on the part of the promoter in fulfilling the above duties, the company may:-

1. Rescind or cancel the contract made and if he has made profit on any related transaction, that profit also may be recovered
2. Retain the property paying no more for it than what the promoter has paid for it depriving him of the secret profit.
3. If these are not appropriate (eg cases where the property has altered in such a manner that it is not possible to cancel the contract or where the promoter has already received his secret profit), the company can sue him for breach of trust. Damages upto the difference between the market value of the property and the contract price can be recovered from him.

A promoter may be rewarded by the company for efforts undertaken by him in forming the company in several ways. The more common ones are :-

1. The company may pay some remuneration for the services rendered.
2. The promoter may make profits on transactions entered by him with the company after making full disclosure to the company and its members.
3. The promoter may sell his property for fully paid shares in the company after making full disclosures.
4. The promoter may be given an option to buy further shares in the company.
5. The promoter may be given commission on shares sold.
6. The articles of the Company may provide for fixed sum to be paid by the company to him. However, such provision has no legal effect and the promoter cannot sue to enforce it but if the company makes such payment, it cannot recover it back.

## **MEMORANDUM OF ASSOCIATION**

Definition of 'Memorandum of Association': In Section 2 (56) of the Companies Act, 2013, the definition of memorandum is given which is as follows:

“ Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies laws or this Act.”

## **Form of Memorandum**

The memorandum of association of a company shall be in such one of the forms in tables in Schedule I as may be applicable to the case of the company or in a form as near thereto as circumstances admit.

### **Printing and signature of memorandum:**

The memorandum shall -

- a) be printed
- b) be divide into paragraphs numbered consecutively and
- c) be signed by such subscriber (who shall add his address, description and occupation, if any), in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

Memorandum contains the following clauses.

1. The name clause.
2. The registered office clause.
3. The objects clause.
4. The capital clause.
5. The liability clause
6. The association clause.

No company can be registered unless the Memorandum of Association is submitted to the Registrar. It is required to be prepared according to the provisions of the Companies Act. In the case of a public company, Memorandum must be signed by at least seven persons and if it is a private company, by two persons duly witnessed.

### **Alteration and Amendment of Memorandum:**

1) A company shall not alter the conditions in its memorandum except in the cases, in the mode, and to the extent for which express provision is made in this Act.

### **Change of Object Clause:**

- (1) A company may by special resolution alter the provisions of its memorandum so as to change the place of its registered office from one state to another or with respect to the objects of the company so far as may be required to enable it -
  - a) to carryon its business more economically or more efficiently.
  - b) to attain its main purpose by new or improved means.
  - c) to enlarge or change the local area of its operations.
  - d) To carryon some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.
  - e) To restrict or abandon any of the objects specified in the memorandum.
  - f) To sell or dispose of the whole or any part of the undertaking or of any of the undertakings of the company or
  - g) To amalgamate with any other company or body of persons.
- (2) The alteration of the provisions of memorandum relating to the relating to the change of the place of its registered office from on State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

### **Change of Registered office:**

- (1) No company shall change the place of its registered office from one place to another within a State unless such change is confirmed by the Regional Director.
- (2) The company shall make an application in the prescribed form to the Regional Director for confirmation .
- (3) The confirmation referred to shall be communicated to the company within four weeks from the date of receipt of application for such change.

**Explanation:** For the purpose of this section, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same state

- (4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section ,within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document.
- (5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and Confirmation have been complied with and henceforth the memorandum as altered shall be memorandum of the company.

### **Alteration to be registered within three months:**

- (1) A company shall file with the Registrar-
  - (a) a special resolution passed by a company in relation to clauses (a) to (g) of sub-section (1) of section 17, within one month from the date of such resolution, or
  - (b) a certified copy of the order of the Company Law Board made under sub-section (5) of that section confirming the alteration, within three months from the date of order, as the case may be, together with a period copy of the memorandum as altered and the Registrar shall register the same and certify the registration under this hand within one month from the date of filling of such documents.
- (2) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and henceforth the memorandum as so altered shall be the memorandum of the company.
- (3) Where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming the alteration shall be held by the company with the register the same, and shall certify under his hand the registration thereof, and the Registrar of the state from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

### **Change of Name:**

A company may, by special resolution and with the approval of the Central Government signified in writing, change its name. It is also provided that so such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion there from, of the work "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or a private company into a public company.

### **Registration of Change of name and effect thereof:**

Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

### **DOCTRINE OF ULTRA VIRES**

An action outside the memorandum is ultravires the company.

#### **The act of company is not ultra vires if it is found:**

This doctrine prevents the wrongful application of the company's assets likely to result in the insolvency of the company and thereby protects creditors. Besides the doctrine of ultra vires prevents directors from departing the object for which the company has been formed and, thus, puts a check over the activities of the directions. It enables the directors to know within what lines of business they are authorized to act.

- (a) The Doctrine of " ultra vires" has been well established in the case of Ashbury Railway carriage & Iron Co. Ltd V. Riche(1875)LR 7 HL 653
- (b) By such representation the directors must have induced the third party to make a contract with the company in respect of a matter beyond the memorandum or powers of the company.
- (c) The third party must have acted on such inducement and suffered some loss.

### **ARTICLES OF ASSOCIATION**

'Articles of Association' is another very important document and if contains the internal regulations of the company relating to internal affairs and the conduct of its business. It regulates the internal management of the company. As a member of fact, the memorandum lays down the objects and purposes for which the company is formed while the articles are subordinate to the memorandum and prescribes regulations for the attainment of the objectives of the company. Form and signature of articles:

**Section 2(5):** Articles means the article of association of company as originally framed or as altered from time to time . It shall

- a. be printed;
  - b. be divided into paragraphs numbered consequently; and
  - c. be signed by each subscriber of the memorandum of association (who shall add his address, description and occupation, if any) in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.
- (a) Articles of Association contains the rules, regulations, bye-laws etc. for the internal management of the affairs of the company. Such rules, regulations are framed for carrying out the aims objects as set out in the Memorandum of Association. The following types of Companies are required to have their own articles.
    1. Unlimited companies
    2. Companies limited by guarantee



## **Private Companies limited by shares**

The Articles of Association is required to be signed by the subscribers of the Memorandum of Association along with the memorandum. A public company may have its own articles of association. But, if in case, it does not have its own articles, I may adopt given in schedule to the Companies Act of 2013.

### **Alteration of articles by special resolution:(v/s14)**

**Section 14** Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, but special resolution, alter its articles.

It is provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect ;unless such alteration has been approved by the Central Government.

### **The Doctrine of Constructive Notice:**

Memorandum of Association and articles of association are two most important documents needed for the incorporation of a company. The memorandum of a company is the constitution of that company. It sets out the -

- (a) object clause,
- (b) name clause,
- (c) registered office clause,
- (d) liability clause and
- (e) capital clause; whereas the articles of association enumerate the internal rules of the company under which it will be governed.

### **Constructive Notice:**

Memorandum of association and the articles of association are public documents in the sense that any person may inspect any document which will include the memorandum and articles of the company kept by the registrar of companies in accordance with the rules made being documents filed and registered in pursuance of the act.

### **Unreal Doctrine:**

#### **The doctrine of Indoor Management:**

It imposes an important limitation on the doctrine of constructive notice. According to this doctrine “persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed”. The doctrine of indoor management is also known as the TURQUAND rule after Royal British Bank v. Turquand

## **PROSPECTUS**

When the certificate of incorporation is obtained, the promoters and directors of a public company, in order to raise the necessary capital, invite the public to subscribe to its shares or debentures. This done by issuing a document called “Prospectus”. The definition of “Prospectus” is given in Section 2 (10) of the Companies Act, 2013 which is given on next page.

“Prospectus and includes any notice, circular, advertisement or other document inviting deposits form the public or inviting offers form the public for the subscription or purchase of any securities of a body corporate.

From this definition of a prospectus, we come to know that -

- (1) A prospectus is a document and really the means of raising share capital and it plays the role of silent salesman.

- (2) A prospectus can be any notice, circular, advertisement or even any other document.
- (3) It is issued to invite the subscription to securities such as shares or debentures etc. with a company.

**Civil Liability for Mis-statements in Prospectus and Compensation under Section 35:**

- (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say -
  - (a) every person who is a director of the company at the time of the issue of the prospectus;
  - (b) every person who has authorised himself to be named and is named as in the prospectus either as a director, or as having agreed to become director, either immediately or after an interval of time;
  - (c) every person who is a promoter of the company; and
  - (d) every person who has authorised the issue of the prospectus

It is provided that where, under section 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

- (2) No person shall be liable if he proves -
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
  - (b) that, in prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
  - (c) that, after the issue of the prospectus and before allotment there-under, he on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefore; or
  - (d) that-
    - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and
    - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation, and he had reasonable ground to believe, and did up to the time of the issue of the prospectus, believe that the person making the statement was competent to make it and that person had given the consent required to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the

prospectus for registration or, to the defendant's knowledge, before allotment thereunder, and

- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official documents, it was a correct and fair representation of the statement, or a correct and fair extract from the document.
- (3) A person who, shall not apply in the case of a person liable, by reason of his having given a consent required of him as a person who has authorised the issue of a prospectus in respect of an untrue statement, purporting to be made by him as an expert shall not be so liable, if he proves-
- (a) that, having given his consent to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration;
  - (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he on becoming aware of the untrue statements withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefore; or
  - (c) that, he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe that the statement was true.
- (4) Where-
- (a) the prospectus specifies the name of a person as a director of the company; or-as having agreed to become a director thereof and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
  - (b) the consent of a person is required to the issue of the prospectus and the either has not given that consent or has withdrawn it before the issue of the prospectus;

#### **Criminal Liability for Mis-statements in prospectus and Compensation under Section 34 :**

- 1) Where a Prospectus issued after the commencement of this Act includes any untrue statement, every person who authorized the issue of the prospectus shall be punishable, unless he proves whether that the statement was immaterial or that he had reasonable found to believe and did up to the time of the issue of the prospectus believe, that the statement was true.

### **ALLOTMENT OF SECURITIES**

As per sec 447 any person who is found to be guilty of fraud shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not less than the amount involved in the fraud , but which may extend to three times the amount involved in the fraud provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

### **SHARE CAPITAL**

There are two basic types of kinds of capital of a company i.e., owned capital and borrowed capital. Share and stocks represent owned capital while debentures and bonds represent borrowed capital.

#### **Classification of Share Capital**

Share Capital refers to the capital raised by the company by issuing its shares to the people.

## **Authorised Capital:**

It is also known as nominal or registered capital. Total amount of authorized capital is mentioned in the Memorandum of Association of a company with the division thereof into shares of different nominations. This is, in fact the maximum capital which the company can raise during its lifetime unless it is increased by following certain legal procedure suggested in the Act.

## **Issued Capital:**

It is not necessary for any company that it must issue all the authorised capital. The Company may issue certain shares according to its requirement, Issued capital can be defined as the nominal value of shares which are offered to the public for subscription. Issued capital is always less than the authorised capital or it can be equal to it.

## **Subscribed Capital:**

When shares are offered to the public for subscription, public may not take all such shares. In such, the part of the issued capital which is taken by the public is known as the subscribed capital.

## **Called-up and Paid-up Capital:**

Called-up capital is that part of the issued capital which has been called up on the shares issued for subscription. While the amount which is actually paid by the subscribers towards the share capital accepted by them is called, paid up capital. The entire capital issued and subscribed need not be called up and paid up immediately.

## **Un-called Capital:**

That part of the issued and subscribed capital which has not been called up is known as un-called capital. Subject to the terms of issue of shares and the provisions of the articles of association, the company can call the amount of un-called capital any time when required.

## **Reserved Capital :**

A limited company may by special resolution/determine that any portion of its shares capital which has not been already called-up shall not be capable of being called up, except in the event and for the purposes of the company being wound up and thereupon that portion of its share capital shall not be capable of being called-up except in that event and for those purposes [Section 99]. Thus, reserve capital is that part of the uncalled capital which can only be called up at the time of and for the purposes of winding up for the company. This implies that reserve capital is available only for creditors on the winding up of the company.

## **Share and Types or Kinds of Share Capital**

### **Kinds of Share Capital:**

A company raises capital by issuing either preference shares or equity shares. When it raises capital by issuing shares, it is known as owned capital. But, besides by issuing shares, company issues debentures and bonds and raises the capital, that is known as borrowed capital. Provisions of Section 85 make clear two kinds or types of share capital i.e. Preference share capital and equity share capital.

- (1) "Preference share capital" means, with the reference to any company limited by shares, whether formed before or after the commencement of this Act, the part of the share capital of the company which fulfils both the following requirements, namely:
  - (a) that as respects dividends, it carries or will carry a 'preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax; and
  - (b) that as respect capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up, whether or not there is a preferential right to the payment of either or

both of the following amounts, namely:

- (i) any money remaining unpaid, in respect of the amounts specified in clause (a) up to the date of the winding up or repayment of capital; and
- (ii) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company [Section 85 (1)]

Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either both of the following rights, namely:

- (i) that, as respects dividends, in addition to the preferential right to the amount specified in clause (a), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
- (ii) that, as respects capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified clause (b), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid [Explanation to Section 85 (1 )].

## **Types of Preference Shares**

### **1. Cumulative or Non-cumulative:**

A non-cumulative or simple preference shares gives right to fixed percentage dividend of profit of each year. In case no dividend thereon is declared in any year because of absence of profit, the holders of preference shares get nothing nor can they claim unpaid dividend in the subsequent year or years in respect of that year. Cumulative preference shares however give the right to the preference shareholders to demand the unpaid dividend in any year during the subsequent year or years when the profits are available for distribution. In this case dividends which are not paid in any year are accumulated and are paid out when the profits are available.

### **2. Redeemable and Non- Redeemable :**

Redeemable Preference shares are preference shares which have to be repaid by the company after the term of which for which the preference shares have been issued. Irredeemable Preference shares means preference shares need not repaid by the company except on winding up of the company. However, under the Indian Companies Act, a company cannot issue irredeemable preference shares. "Equity share capital" means, with reference to any such company, all share capital which is not preference share capital [Section 85 (2)]

- (1) The expressions "preference share" and "equity share" shall be constructed accordingly"

## **DEBENTURE AND CHARGES**

A debenture is a document that either creates a debt or acknowledges it. Debentures are generally freely transferable by the debenture holder. Debenture holders have no voting rights and the interest paid to them is a charge against profit in the company's financial statements. As per Section 2(30) "debenture" includes debenture stock bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

### **Nature of shares or debentures**

As per section 44 the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

### **Kinds of Debentures:**

There are various kinds of debentures. They are:

**1. Registered Debenture:**

When the name of the debenture-holder is mentioned on the debenture certificate and is recorded in the debenture holders register, he is registered debenture holder. He may transfer such debenture just like shares executing the instrument of transfer.

**2. Bearer Debenture:**

Sometimes the debentures may be payable to bearer. Such debentures could be transferred like bearer negotiable instrument, mere delivery.

**3. Redeemable Debentures:**

When a company issues debentures it specifies the period of the loan, or in other words, it mentions the terms on the expiry of which they are to be redeemed. The company redeeming the debentures can re-issue the same, when the same are re-issued and the person now entitled to debentures shall have the rights and priorities as if the debentures had never been redeemed.

**4. Irredeemable :**

A company can issue such debentures also which the company may not redeem or buy back. Such debentures are known as irredeemable or perpetual debentures.

**5. Naked Debentures:**

An unsecured debenture is called naked debenture. Such debentures do not carry any charge on the property of the company.

**6. Mortgage Debentures:**

Mortgage debentures are those which are secured by a charge on the whole or part of the property of the company.

**7. Convertible debentures**, which are convertible bonds or bonds that can be converted into equity shares of the issuing company after a predetermined period of time. "Convertibility" is a feature that corporations may add to the bonds they issue to make them more attractive to buyers. In other words, it is a special feature that a corporate bond may carry. As a result of the advantage a buyer gets from the ability to convert; convertible bonds typically have lower interest rates than non-convertible corporate bonds.

**8. Non-convertible debentures**, which are simply regular debentures, cannot be converted into equity shares of the liable company. They are debentures without the convertibility feature attached to them. As a result, they usually carry higher interest rates than their convertible counterparts

**CREATION OF CHARGES OR CHARGES SECURING DEBENTURES OR FIXED CHARGES AND FLOATING CHARGES)**

Debentures are loans that are usually secured and are said to have either fixed or floating charges with them. A secured debenture is one that is specifically tied to the financing of a particular asset such as a building or a machine.

A charge means an interest or right which a lender or creditor obtains in the property of the company by way of security that the company will pay back the debt. Charges are of 2 types :-

**1. Fixed Charge :**

Such a charge is against a specific clearly identifiable and defined property. The property under charge is identified at the time of creation of charge. The nature and identity of the property does not change during the existence of the charge. The company can transfer the property charged

only subject to that charge so that the charge holder or mortgage must be paid first whatever is due to him before disposing off that property.

## **2. Floating Charge:**

Such a charge is available only to companies as borrower. A Floating charge does attach to any definite property but covers the property of a circulating and fluctuating nature such as stock-in-trade, debtors, etc. It attaches to the property charged in the varying conditions in which happens to be from time to time. Such a charge remains dormant until the undertaking charge ceases to be a going concern or until the person in whose favour charge created takes steps to crystallize the floating charge. A floating charge on crystallization becomes a fixed charge.

## **COMPANY MEETINGS**

A meeting can be defined as a gathering or an assembly or getting together of a number of persons for transacting a lawful business having certain purpose. So far as company meeting are concerned, they must be convened and held in perfect compliance with the applicable provisions of the Company Act of 2013 and the rules made the hereunder. The meetings of a company are of different types or kinds which are mentioned below.

- (a) Board meetings.
- (b) Meetings of the Committees of the Board.
- (c) Meetings of debenture holders.
- (d) Meetings of creditors for the purposes other than winding up and for the purpose of winding up.
- (e) Meetings of contributories in winding up.
- (f) Shareholders meetings i.e.
  - (i) Statutory Meeting,
  - (ii) Annual General Meeting,
  - (iii) Extra-Ordinary General Meeting, and
  - (iv) Class Meetings

### **Requisites or Essentials of a Valid Meeting**

A meeting, whether of directors, or of shareholders or any other meeting of a company must be duly convened, legally constituted and properly conducted without which the decisions taken in the meeting or business conducted in the meeting are not considered as valid. The important requisites of a valid meeting are as follows:

#### **(a) Proper authority to convene and hold a company meeting:**

Every meeting of a company must be properly convened and duly constituted. The proper authority to convene the meeting is the Board of Directors, Shareholders or the Company Law Board.

#### **(b) Notice:**

Proper and adequate notice of a meeting is required to be given under the Companies Act of 1956 to all those who are entitled to attend the same as per the provisions. For example, for statutory, annual or extra-ordinary meeting, atleast twenty one day's notice is required to be given to all the concerned members. In the notice, place, day and date, time of holding the meeting are required to be mentioned.

**(c) Agenda:**

Agenda is a statement of items to be discussed at the meeting. The statement must include all materials facts concerning each item of business to be conducted. Necessary documents are required to be annexed to the notice of the meeting.

**(d) Chairman:**

There must be a proper person in the chair who may be designated or elected to preside over and conduct the proceedings of a meeting as per the rules. Every meeting must have a chairman.

**(e) Quorum:**

The term 'Quorum' denotes the minimum number of the members must be present at a meeting to imitate and conduct the business of the meeting as required by law or rules. Required reason to maintain the quorum is to avoid the decision being taken at a meeting by a small minority which may be unacceptable to the vast majority of members.

There must be atleast two persons to constitute a meeting. However, in the following circumstances, there can be "one man meeting" which forms the quorum.

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# 3. LABOUR LAW - I

## INDUSTRIAL RELATIONS AND WAGES

### UNIT - I

#### ORIGIN AND DEVELOPMENT OF LABOUR LEGISLATION

1. Law of Master and Servant under Common Law.
2. State regulation through Labour Legislations.
3. Role of ILO in Setting Labour Standards.
4. History of Labour Legislations in India.
5. Object and Nature of Labour Legislation.

### UNIT - II

## THE INDUSTRIAL DISPUTES ACT, 1947

#### 1. The main objective of the Act:

- (a) The promotion of measures for securing and preserving amity and good relations between employer and workmen;
- (b) An investigation and settlement of industrial disputes;
- (c) Regulation of strikes and lock-outs; and
- (d) Relief to workmen in cases of lay-off, retrenchment and closure of industrial establishment.

#### 2. Definitions:

##### (a) Industry: Sec. 2 (j)

The applicability of the Act is mainly based on this concept. Though the provision is worded in a simple language, conflicting opinions emerged. Finally it was resolved by the Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa, AIR 1978 SC. The Court redefined the word industry and formulated two test to identify an industry.

- (i) Triple Test and
- (ii) Predominant Nature Test.

The following cases are to be studied in this connection:

1. D.N. Banerjee v. P.R. Mukherjee. AIR 1953 SC.
2. Nagpur Corporation v. Its Employees. AIR 1960 SC.
3. State of Bombay v. Hospital Mazdoor Sabha. AIR 1960 SC.
4. Safdarjung Hospital v. Kuldip Singh. AIR 1970 SC.
5. University of Delhi v. Ramnath. AIR 1963 SC.
6. Brahma Samaj Education Society v. West Bengal College Employees Association. AIR 1960 Cal.
7. Madras Gymkhana Club Employees Union v. Management. AIR 1968 SC.
8. N.N.U.C. Employees v Industrial Tribunal. AI R 1962 SC.
9. Swaraj Ashram v. Industrial Tribunal, U.P. AIR 1979 SC.
10. Soundarajan v. Secretary to Govt. of India, Ministry of Labour (1994) 2 LLJ (Mad).

11. Union of India v. Kamlesh Kumar Bharti, (1998) SCC.
12. Coir Board v. Indira Devi P.S. (1998) SCC.

This provision has been amended by the Industrial Disputes Amendment Act 1982 which has not been enforced till now.

**(b) Industrial Dispute: Sec. 2 (K)**

This definition can be studied under three heads:

- (1) Factum of Dispute: Dispute or Difference. Dispute is a controversy in which the parties are directly and substantially interested in maintaining their respective contention. It should not be mere ideological difference. Expression of grievance is not a demand.
- (2) Parties to the Dispute: Dispute must be between employer and workmen; Workmen and Workmen and employer and' employer. Individual dispute when becomes an industrial disputes (Sec. 2A)
- (3) Subject matter of the Dispute: Employment, non-employment; Terms of employment or conditions of labour of any person.
  1. Workmen v. Dharampal Premchand AI R 1960 SC.
  2. Workman of Dimakuchi Tea Estate v. Mgt. of Dimakuchi Tea Estate AIR 1958 SC.
  3. Workmen of Indian Express Newspaper Ltd. v. The Management AIR 1970 SC.

When does an Industrial dispute become and Industrial Dispute. Dispute between individual workmen and employer does not constitute industrial dispute but if there is involment by the trade union or considerable number of workmen.

## **INDUSTRIAL DISPUTES**

**Settlement Machinery 26-18 Industrial Relations And Industrial Disputes Conciliation:**

The practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. Conciliation officer: an authority appointed by the government to mediate disputes between parties brought to his notice; enjoying the powers of a civil court. He is supposed to give judgement within 14 days of the commencement of the conciliation proceedings. Board of conciliation: The Board is an adhoc, tripartite body having the powers of a civil court created for a specific dispute (when the conciliation officer fails to resolve disputes within a time frame, the board is appointed) Court of enquiry: In case the conciliation proceedings fail to resolve a dispute, a court of enquiry is constituted by the government to investigate the dispute and submit the report within six months.

**26-19 Industrial Relations And Industrial Disputes Voluntary arbitration:**

It is he process in which the disputing parties show willingness to go to an arbitrator (a third party) and submit to his decision voluntarily. This is followed after failure of conciliation proceedings. Adjudication: It is the process of settling disputes compulsorily through the intervention of a third party appointed by the Government. The Industrial Disputes Act provides a three-tier adjudication machinery consisting of: Labour court Industrial tribunal National tribunal Machinery For The Settlement of Industrial Disputes In India

## Case Law:

Central Provinces Transport Industrial Services Versus R.G. Patvardhan 1957 (1) LLJ.  
Newspaper Ltd. Versus Industrial Tribunal U.P AIR 1957 SC  
Bombay Union of Journalist Versus the Hindu 1961 (2) LLJ

### (c) Workman: Sec. 2(S)

1. Statutory meaning of Workmen.
2. Persons who are included by the definition.
3. Excluded categories of Persons.

### Excluded categories of persons

Also those who are employed mainly in managerial or administrative functions, Supervisory capacity. Those who are getting monthly wages Rs. 10,000/- and above as per the amendment made in the year 2000.

#### Cases:

1. Dharagadhara chemical works Ltd v. State of Saurashtra. AI R 1956 SC.
2. Punjab National Bank v. Qulam Dastagin. AIR 1978 SC.

### (d) Approximate Government: Sec. 2(a)

The general principle is that in case of an industry carried on by or under the authority of the central govt or the industry being located in more than one state, the appropriate govt is the central govt. In all other cases the State Govt. is the appropriate govt.

#### Cases:

1. Bharat Glass Works (Private) Ltd., v. State of West Bengal. AIR 1957 Cal.
2. Hindustan Machine Tools Ltd., v. Industrial Tribunal Jaipur, (1993) LLJ. Raj.

### (e) Public Utility Service: Sec. 2(n)

#### Cases:

1. D.N. Banerji v. P.R. Mukherjee AIR 1955 SC. ,
2. Johnson arid Johnson Employees Union v. Union of India (1994) LLJ. Bom.
3. Machineries for Settlement of Industrial disputes:

### 3. (a) Works Committee: Sec. 3.

Constitution, functions and duties of works committee.

#### Cases:

North Brook Jute Co. Ltd. v. Workmen AIR 1960 SC.

### (b) Conciliation Officer: Sec. 4.

Conciliation is the persuasive process by which a third party mediates the disputants to come to an agreement among themselves by mutual negotiation.

Appointment of conciliation officer - Sec. 4.

Powers of Conciliation Officer - Sec. 11

Duties of Conciliation Officer - Sec. 12

### (c) Board of Conciliation:

Constitution of Board of Conciliation - Sec. 5

Duties of the Board - Sec. 13

Commencement and Conclusion of Conciliation Proceeding - Sec. 20

Settlement in conciliation Proceeding - Sec. 2 (p)

Period of operation of settlement - Sec. 19

Binding nature of settlement - Sec. 18

Functioning and operation of conciliation machinery - A critical study is to be made.

**Cases:**

Ram Nagar Cane and Sugar Co. Ltd. v. Jatin Chakravarthi

Balmer Lawrie Worker's Union v. Balmer Lawre AIR 1960 SC. & Co. 1985 LLJ SC

**(d) Court of Inquiry: Sec. 6**

Constitution and duties of Court, of Inquiry. Sec. 14 and Sec. 17.

**(e) Labour Court:**

Constitution of Labour Court - Sec. 7

Jurisdiction in respect of subject matter - Schedule II of the Act.

**(f) Industrial Tribunal :**

Constitution of Industrial Tribunal - Sec. 7 A.

Jurisdiction in respect of Subject matter - Schedule III of the Act.

**(g) National Tribunal :**

Constitution and Jurisdiction of National Tribunal - Sec. 7B.

Procedures and Powers of Labour Court etc. - Sec. 11, 11 A.

Duties of Labour Court etc., - Sec. 15.

Award in adjudicatory proceeding - Sec. 2(b)

Publication of the award - Sec. 17(1 )

Sri Silk Ltd. v. State of A.P. AIR 1964 SC

Enforcement of the award - Sec. 17 A.

Governments power to modify or reject the award Sec. 17 A.

Binding nature of the award - Sec. 18

Grounds of Judicial review of the award.

Last Protected Workmen

Definition Sec 33 (3) office bearers of a registered trade union given by the employer.

**Cases:**

- 1) Bharat Bank Ltd., Delhi v. Their Employees AI R 1950 SC ..
- 2) Management of Ritz Theatre (Private) Ltd., Delhi v. Its Workmen. AIR 1953 SC.
- 3) G.M. Talang v. Shaw Wallace and Co. Ltd., AIR 1964 SC.
- 4) British Paints (India) Ltd.; v. Its Workmen. AIR 1966 SC.
- 5) H.V. Kamath v. Syed Ahmed Ishaque AIR 1955 SC.
- 6) Bengal Chemical and Pharmaceutical Works Ltd., v. Their Workmen AIR 1959 SC.
- 7) Gujarat Steel Tubes Ltd., v. G.S.T. Mazdoor Sabha. (1980) 1 LLJ SC.
- 8) D.C. & Gen. Mills v. Thejvir, AIR 1972 SC.

**(h) Grievance Settlement Authority: Sec. 9-C.**

(i) Labour Arbitration: (Sec. (10A)

Conditions for Valid reference. Sec. 10A.

Duties and Powers of Labour Arbitrator. Sec. 11.

Commencement and Conclusion of arbitration Proceeding.

Binding nature of arbitration award Sec. 18(2) and 18(3).

Publication of arbitration Award Sec. 17(1).

Measures for Promotion of arbitration machinery.

An assessment of operation of the machinery.

#### **4. Reference of Industrial Dispute (Sec. 10)**

(a) Discretionary reference: Sec. 10(1)

Nature of Power

State of Madras v. C.P. Sarathy AIR 1953 SC. State of Bombay v. K.P. Krishnan. AIR 1960 SC.

Bombay Union of Journalists v. State of Bombay AI R 1964 SC.

Sindhu Resettlement Corporation v. Industrial Tribunal, Gujarat AIR 1968 SC. Veeraranjan v. State of Tamilnadu. AIR 1987 SC.

Shambhu Nath Goyal v. Bank of Baroda (1978) SC.

(b) Mandatory reference: Sec. 10(1) Proviso 2 and Sec. 10(2)

(c) Choice of dispute Settlement Process.

Neimla Textile Finishing Mills Ltd., v. Industrial Tribunal, Punjab AIR 1957 SC:

(d) Consequences of reference.

#### **5. Regulation of Strike and Lock-Out.**

Definition of Strike Sec. 2 (q)

Definition of lock-out Sec. 2 (L)

Prohibition of strikes and lock-outs in public utility service: Sec: 22

General Prohibition of strikes and lock-outs. Sec. 23.

Illegal Strikes and lock-outs. Sec. 24:

Prohibition of financial aid to illegal strike and lock-out. Sec. 25.

Penalty for illegal strike and lock-out. Sec. 26.

##### **Cases:**

1) India General Navigation and Railway Co .. v. Its Workmen. AIR 1960 SC.

2) Crompton Greaves Ltd:, v. Its Workmen. AIR 1978 SC.

3) Gujarat Steel Tubes Ltd., v. Gujarat Steel Tubes Mazdoor. Sabha AI R 1980 SC.

4) Bank of India v. TS. Kelawala AIR 1990 SC.

5) Rahtas Industries Staff Union v. State of Bihar AI R 1963 Patna:

6) The Buckingham Carnatic Mill Co. Ltd., v. Its Workmen. AIR 1953 SC.

#### **6. Relief to Workmen in case of Lay-off :**

Definition of Lay-off Sec. 2 (kkk)

Right of laid off workman to compensation - Sec. 25-C.

Circumstances when workmen not entitled to lay-off compensation - Sec. 25-E.

**Cases:**

1. M.A. Veiyra v. C.P. Fernandez AIR 1957 Bombay.
2. Fire Stone Tyre & Rubber Co. Ltd., v. Its Workmen AIR 1976 SC.
3. Tata Nagar Foundry Co. Ltd., v. Its Workmen. AIR 1962 SC.

**7. Relief to Workman in Case of retrenchment.**

Definition of retrenchment - Sec. 2 (00)

Conditions precedent of retrenchment - Sec. 25 F.

Procedure for retrenchment - Sec. 25 G.

Re-employment of retrenched workman - Sec. 25H.

**Cases:**

1. Parry & Co. Ltd. v. P.C. Pal AIR 1970 SC.
2. Barsi Light Railway Co. Ltd., v. K.N. Joglekar AIR 1957 SC.
3. State Bank of India v. N. Sundaramoney AIR 1976 SC.
4. Robert D'Souza v. Executive Engineer, Southern Railways AIR 1979 Kerala FB.
5. Santhosh Gupta v. State Bank of Patiala. AIR 1980 SC.
6. Punjab Land development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court 1990 SC.

**8. Closure of Industrial establishment**

Definition of Closure - Sec. 2 (cc)

Procedure for closure - Sec. 25 FFA.

Compensation payable to workmen in case of closure - Sec. 25 FFF.

**Cases:**

1. Management of Standard Motors Products of India Ltd. v. A. Parthasarathy (1986) LLJ SC.
2. Prakash Cotton Mills Pvt. Ltd. v. The Rashtriya Mill Mazdoor Sarigh (1987) LLJ SC.
9. Special. Provisions relating to Lay-off, Retrenchment and closure in certain establishments - Sec. 25K - Sec. 25(R).
10. Unfair Labour Practice - Sec. 25-T and Sec. 25-U including Schedule V of the Act.  
Unfair Labour practices on the Part of employer and Trade Union of Employers.  
Unfair Labour practices on the part of workmen and Trade union of workmen.

**Cases:**

1. Eveready Flash Light Company v. Labour Court, Bareilly 1962 LLJ.
2. L.H. Factories and Oil Mills, Pililehit v. State of U.P. 1961 LLJ.
3. Hind Construction and Engineering Co. Ltd. v. Their Workmen. 1965 LLJ SC.
11. Conditions of Service of Workmen to remain unchanged under certain circumstances - Sec. 33, 33A.

## UNIT - III

### THE TRADE UNION ACT, 1926.

1. History of Trade Union Movement in India.
2. Definition of Trade Union Sec. 2h
3. Registration of Trade Union. Sec. 3 - 14.
4. Trade Union Funds - Constitution of General and Political Funds. Sec. 15 and 16.
5. Trade Union Immunities.
  - a. Immunities from Criminal Liability - Sec. 17.
  - b. Immunities from Civil Suits - Sec. 18.
  - c. Enforceability of agreements in restraint of trade - Sec. 19.

#### Cases:

1. West India Steel Company Ltd. v. Azeez. 1990 LLJ Ker.
  2. Rohtas Industries Staff Union v. State of Bihar. AIR 1963 Patna.
  3. Reserve Bank of India v. Ashis Kusum AIR 1969 Cal.
  4. Western India Cinema Employees Federation v. Filmalaya Pvt. Ltd., AIR 1981 Mad.
  5. Simpson and Group Companies Worker's and Staff Union v. Amco Batteries Ltd., 1992 LLJ.
  6. Jaya engineering works v. state of West Bengal AIR 1968 Calcutta 407
6. Trade Union Recognition:
    7. Recognition by agreement - Sec. 28C
    8. Recognition by order of a Labour Court Sec. 28D.
    9. Rights of a recognised Trade Union. Sec: 28F.
  10. Collective Bargaining:
    11. Meaning of Collective bargaining.
    12. Objectives of Collective bargaining.
    13. Essentials of Collective bargaining.
    14. Position of Collective bargaining in Industrial Dispute Act.

## UNIT - IV

### INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

1. Meaning of Standing Order.
2. Procedure for certification of Standing Order - Sec. 3 - 9.
3. Duration and Modification of Standing Order - Sec. 10.

#### Cases:

1. S.S. Light Railway Co. v. S.S. Railway Workers Union. AIR 1969 SC.
2. Western India Match Co. v. Workmen. AIR 1973 SC.
3. Associated Cement Co. Ltd., v. P.O. Vyas. AIR 1960 SC.
4. U.P.E: Supply Co. v. T.N. Chatterjee. AIR 1972 SC.
5. Barauni Refineries P.S.P. v. Indian Oil Corporation Ltd. (1991) 1. LL(SC).

## UNIT - V

### MINIMUM WAGES ACT 1948

1. Theories of wages and wage Policy.
2. Concept of wages - Minimum wage, Living wage and Fair Wage.
3.
  - a) Fixation of minimum rates of wages - Sec. 3 and 4.
  - b) Procedure for fixing and revising minimum wages. - Sec. 5.
  - c) Composition of committees and Advisory Boards - Their powers and functions. Sec. 7-9.
4. Appointment of Inspectors - Powers and functions. Sec. 19.
5. Settlement of Claims arising under the Act - Sec. 20.

Express Newspaper Versus Union of India AIR 1958 SC 528

The authority can order payment of minimum wages if not paid and also impose ten times of wages as fine / or as compensation to worker.

#### Cases:

1. Hydro (Engineers) Private Ltd. v. The Workmen AIR 1969 SC.
2. Kamani Metals and Alloys v. Their Workmen. AIR 1967 SC.
3. S.A.F.L. Works v. State Industrial Tribunal, Nagpur. AIR 1978 SC.
4. Edward Mills Co. Ltd., v. State of Ajmer (1954) LLJ:
5. The crown aluminium versus their workmen AIR 1958 SC 30

### THE PAYMENT OF WAGES ACT, 1936

1. Employers responsibility for the payment of wages. Sec. 3. - Exception to this rule - Fixation of wage periods - Time of Payment of Wages - Wages to be paid in current coins and currency notes. Sec. 4, 5 and 8.
2. Deductions which may be made from wages - Sec., 7.
  - a) What is deduction - Explanation 1 to Sec. 7.
  - b) What are not deduction - Explanation 11 to Sec. 7.
  - c) Authorised Deductions - Sec. 7(2).
    - (i) Deductions by way of fine.
    - (ii) Deductions for absence from duty.
    - (iii) Deductions for house accommodation, Service etc.,
    - (iv) Deductions for advances or loans etc.,
    - (v) Deductions for damages to or loss of goods.
    - (vi) Deductions for Income Tax Payable.
    - (vii) Deductions pursuant to an order of a court.
    - (viii) Deductions for PF or National Defence Fund.



- (ix) Deductions for Co-operative Societies.
- (x) Deductions for Insurance or Savings.
- (xi) Deductions by Railway Administration.
- (xii) Permissible Total deductions ..

3. Appointment of Inspectors - Their Powers and functions - Claims and their settlement.

The overall limit of deduction is made in respect of Amount payable to cooperative societies not to exceed 75% and in other case 50 % of the total wages.

**Equal Remuneration Act, 1976**

- Duty of employer to pay equal remuneration to men and women (Sec 4)
- Prohibition of discrimination in recruitment or other condition of service ( Sec 5)
- Advisory Committee (increasing employment opportunities for women) (Sec 6)
- Authorities for hearing and deciding claims and complaints ( Sec 7)
- Maintenance of Registers ( Sec 8)

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# 4. CLINICAL COURSE - I

## PROFESSIONAL ETHICS & PROFESSIONAL ACCOUNTING SYSTEM (INTERNAL)

### Importance of Legal Profession

The Legal Profession plays a very important role in the administration of Justice. Lawyers assist the court in arriving at a correct Judgement. Actually the law is very complicated. The language of acts and regulations is often found very complicated and confusing and not easy to be understood. The lawyers are not puppets compelled to obey the dictate of their clients. Where matters of good faith and Honourable conduct are concerned. They are also responsible to the court for the fair and honest conduct of a case, they are agents, not of man who plays them but are acting in the administration of justice.

According to C. L. Anand has stated that 'It has rightly been observed that a sound system of the administration of justice should possess 3 ingredients, namely

- i) A well planned body of laws based on wise concepts of social justice;
- ii) A judicial hierarchy comprised of the Bench and Bar;
- iii) The learned in the law and inspired by high principles of professional conduct and existence of suitable generation to ensure fair trial.

So the legal profession is a profession of great honour. It has been created not for private gain but for public good: It is not money making occupation but a branch of Administration of Justice.

### Legal Profession in Pre-British India

During the Hindu period the courts derived their authority from the king who was considered the fountain head of justice. The King's Court are superior to all other courts. The king was advised by his councillors in hearing and deciding the case but he was not bound by their advise.

There is no mention in the Kautilya's Arthashastra about the existence of legal profession and therefore most probably such a class did not exist. But according to Justice Ashutosh Mukherjee legal profession was in existence during the Hindu period.

During the Muslim period the litigants were represented by a body of persons known as Vakils The court of the kings Administrations concerned determined who should be allowed to appear as Vakil in a Zilla Court. During this period the legal profession was not an organised one. The Vakils acted more an agent for principals than as lawyer:

### Legal Profession during British period:

The East Indian Company was not interested in legal profession. And there was no uniform Judicial system in the settlements of the East Indian Company.

First by a Charter of 1726 a uniform system in each Presidency Towns i.e., Bombay, Calcutta, Chennai, created and Mayor Court was introduced. There was no specific regulation for the legal practitioners and no provision for legal training. Many person having no knowledge of law were practising law. After the Regulating Act 1773 and the Charter of 1774 there was much development of legal profession.

The crown abolished the charter of 1774 and established Supreme court of Judicature at Calcutta by issuing a charter and the mayor court were abolished.

As per clause II of the Charter of 1774, provided and contained as “We do further authorise and empower the said Supreme Court of Judicature at Fort William in Bengal to approve, admit and enrol such and so many Advocates and attorneys at law as to the said Supreme Court of judicature at Fort William in Bengal seem meet, who shall be attorneys on record shall be and are hereby authorised to appear and act and plead and act for suitors of the said supreme Court of Judicature at Port Williams and the said Advocates and Attorneys on reasonable ground to remove and no other persons whatsoever but such Advocates and attorneys so admitted and enrolled shall be allowed to appear and plead or act in the said Supreme Court, of Judicature of Fort Williams in Bengal for or on behalf of such suitors or any of them.”

As per Clause II of Charter of 1774 it empowered Supreme Court to approve and cancel or remove Advocates and attorneys at law on reasonable cause. They were authorised to appear and plead and act for the suitors of the Supreme Court. This clause made it clear that no other person but advocates, or attorneys so admitted and enrolled could appear plead or act in the Supreme Court.

The term ‘Advocate’ extended only to English and Irish Barristers and members of the faculty of Advocates in Scotland and the term ‘Attorneys’ then meant only the British attorneys or solicitors. Thus the Indian Legal Practitioners were not authorised to appear before the Supreme Court.

The company’s court are not organised one. In addition to company’s court Big Zamindars also had courts exercising both civil and criminal jurisdiction.

Sadar Diwari Adalat to enroll pleaders for company courts.

Afterwards the Bengal Regulations XXVII of 1814 made provisions to organise legal profession And Bengal regulation XII of 1833 was modified.

Soon after the legal practitioners Act 1846 was enacted this made certain provision that people of any nationality or religion would be eligible to be pleaders and attorneys or Barristers enrolled in any of her majesties courts in India would be eligible to plead in the company’s Sardar Adalat.

The Legal Practitioners Act 1853 authorised the Barrister and attorney of Supreme Court to plead in the company court.

The most significant in the English period is the enactment of the Indian High Court Act 1861 . The crown established High Court at each presidency towns.

The High Court of Judicature of Fort Williams in Bengal; was empowered to approve, admit and enroll such advocates the High Court shall deem fit.

### **Legal Practitioners Act, 1879**

In the year 1879 the legal practitioner Act was passed to consolidate and amended the law relating to the legal practitioners it empowered an advocate or Vakil on the role of any High Court or pleader of the Chief Court of Punjab to practice in all the courts subordinate to the court on the role of which he was entered.

Under the legal practitioners Act 1879 the term legal practitioner has been taken to mean Advocates Vakil or Attorney of High Court and pleader. This act was passed to I consolidate and amend the law relating to legal practitioners, Advocates or Vakil on the role of the High Court can practise through India.

Section 13 of the Act empowered the High Court to suspend or dismiss pleader or Mukhtar guilty of unprofessional conduct.

Section 5 - Deals with persons in the roll can practise.

Section 6 - Deals with suspensions dismissal of pleader or Mukthars.

Section 7 - Made provisions in respect of issuance of certificate

Section 13 - Dealt with powering of High Court reporting suspension of members.

### **Indian Bar Committees, 1923**

In the year 1923 Under the Chairmanship of Sir Edward Chamier a Committee called dian Bar Committee was constituted. The committee was to consider the issue as to organization of the Bar on all India basis and establishment of an all India Bar Counsel for the High Court - The committee suggested that in all High Courts a single grade of practitioners should be established and they should be called Advocates.

It recommended Bar counsel to be constituted at all High Court. The High Court got power to take disciplinary action against the Advocates for misconduct. It got powers to refer to the Bar Council before to enquire and report. Every Bar Council consisted of 15 members. This system was present in all High Courts.

- 10 members elected from among advocates
- 4 members nominated by High Court
- 1 member was Advocate General

### **Indian Bar Council Act, 1926**

In the year 1926 the Indian Bar Council Act was enacted to give effect to the some of the recommendations of the Indian Bar Committee. The main object was to provide for the constitution an in corporation of Bar Counsel for certain courts.

- 1) To confer powers and impose duties as such court.
- 2) To amend the law relating to the legal practitioners of such courts.

The distinction between Advocates and Barrister, abolished under Section 10. The High Court got power to reprimand, suspend or remove from practice of advocate for guilty of professional misconduct and other misconduct based on complaint.

### **Legal Profession after Independence**

In the year 1951 , All India Bar Committee appointed by Chairmanship of Justice S. R. Das. It recommended to establish All India Bar Council and Branch in the each state, powers and vested with Bar council for enrolment, suspension removed and the previous powers conferred on High Court is removed.

A common roll to practice allover India.

Then Advocate Act in the year 1961 was enacted.

### **Advocates' Act, 1961**

Admission and Enrolment:

Section 16 to 12 deals with regarding qualification for admission and enrolment before the Bar Council an Advocate.

Two Clauses (1) Senior Advocates and (2) Other advocates.

### **Senior Advocate:**

1. Designated by virtue of his ability standing at the Bar or Special knowledge or experience in law or he is deserving such distinction. The senior Advocates restriction deals in the Bar Council of India and Chapter-I Part (VI) Under Section 49 (1) of Advocate Act.
2. Shall not appear without an advocate on record in Supreme Court or without an advocate. Shall not accept any brief directly.
3. Shall not accept instructions to draft pleadings or affidavits, advises evidence or to do any drafting work of an analogous in any court. Junior other Advocate pay him to fee which he consider a reasonable one.

### **Eligibility for Admission on State Rules**

- 1) Citizen of India or other Country permitted to practice:
- 2) 21 years age or above
- 3) Obtained a law degree

Sudeer- v. - Bar Council of India in this case AIR 1999 SC 1167.

Supreme Court held the Bar Council of India Rule providing for pre enrolment training and apprenticeship is ultra-vires as per the rule making power of the Bar Council of India [.available fact under the Advocate Act.

Haniraj L. Chulani v. Bar Council of Maharashtra and Goa. The Supreme Court in this case held that a person carrying on another profession not allowed to practice or enrol as advocate i.e., Doctor is not violative of Article 21,14,19,18 of the Constitution of Law of India.

Indian council legal aid and advice v. BCI Supreme Court held (AIR 1995 Section 1691) the rule departing person who have completed the age of 45 years is beyond the rule making power of Bar Council of India.

### **Disqualification of Enrolment**

Section 24-A Advocates Act that no person shall be admitted as Advocate.

1. If he is convicted of an offence involving moral
2. If he is convicted of an offence under the provision of the untouchability offence (Act 1958).

But after 2 years is elapsed since his release.

Section 30 Deals with right to practice through the territory to which the advocates act extends all courts including supreme court tribunal.

But this section have not been brought into effect by the Central Government. Hence the advocate continue to be debated from appearing in many tribunals such as Industrial Tribunal, Family court etc.

### **Important Powers of Bar Council and Functions of Bar Council**

1. To admit person an advocates on its rolls.
2. Preparation and maintenance of such rolls.
3. To entertain and determine cases of misconduct against advocates.
4. To promote, safeguard, privileges of advocates.
5. To promise and support law reforms supervision and counsel of other state bar.

6. To promote legal education:
7. To lay down standards of legal education.
8. To recognise degrees for enrolment.

### **Professional Ethics**

1. Section 49 (1 ) (c) of the Advocates Act, 1961 empowers the Bar Council of India.

### **Duty to the Court**

1. Advocate is required to conduct himself with dignity and self respect. Not to complaint against judicial officer of grievances to be make complaint to the proper authorities.
2. To maintain respect to court and dignity of the judicial officer.
3. Not to influence the decision of the court by any illegal or improper means.
4. Prohibit private communication with Presiding Officer / Judge.
5. Not to encourage client unfair practice or from doing any thing in relation to the court.
6. To appear in the prescribed dress and his appearance shall always be presentable.
7. An advocate shall not either appearance in any way before a Court Trial if the role of any member there of in related to advocate.
8. Not to wear bonds or grown in public places other then in court.
9. Not to appear if he got any receiving interest or he is a exercise a member on director of a company or corporations.

### **Duty**

Rule 11 to 33 deals duties of advocate to his client.

1. An Advocate is bound to accept any brief in special circumstances he may refuse to accept a particular brief. S. J. Chaudry v. State (AI R 1996 SC 98) Supreme Court held that if an advocates accepts the brief of a case attend day to day and if he fails and he does not do so, he will be held liable for breach of professional duty. Shall not withdraw from engagement.
2. If he does, notice to be given to the client and he is bound to refund such part of fee as has not been spent.
3. If situation warrants in before in future if he happens to be witness he should not accept the brief.
4. To make help and frank disclosure to his client relating to his conviction with the parties any controversies likely to arise at the time of taking brief.
5. To uphold the interest of his client.
6. If a advocate appear for prosecution he should not conduct the case lead to conviction of the innocent.
7. Advocate shall not commit directly or indirectly a breach of the obligation imposed by Section 126 of Evidence Act professional communication.
8. Not to be a party to fermenting of litigation.
9. Only act on the instruction of client and not others.

10. The fee of an advocate depending upon the success of the suit is considered as opposed to the public policy. Also not consistent fee or percentage of the benefit and will be arrived by client.
11. Shall not buy or traffic in a stipulate for or agree to receive share or instruct in any actionable claims
12. Not to bid or purchase any property he was professionally engaged.
13. To keep proper account for the money entrusted to him.
14. Any amount is received on behalf of client that should be given to him.
15. On demand from client a copy of the account to be furnished.
16. Rule 32 prohibits an advocate to lend money to his client for the purpose of any legal proceedings or actions.

In V.C. Rangadurai V.D. Gopalan Supreme Court observed that the ratio between the advocate and his client is purely personal involving highest personal trust and confidence. P.O. Gupta v. Ram Murti (AIR 1998 SC 283)

An advocate purchased a property at a very low price from his client which is a subject matter of litigation and sold the same to third person and made profit. He was held of professional misconduct.

Harish Chand Singh v. Tripathi a Senior Advocate appointed his own junior as Mukhtar of complaint in consolidation case. He misguided his junior and tried to dispose of the property in favour of his own father. Senior Advocate held guilty of professional misconduct.

### **Duty to Opponent**

Rule 34 and 35 of BCI

1. Rule 34 provides that an advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.
2. Rule 35 deals that an advocate shall do his best to carry out all promises made to the opposite party even though not reduced to writing or enforceable under the rules of the court.

### **Duty to Colleagues**

Rule 36; to 39 of BCI

- 1) Shall not solicit work or advertise (either direct or indirect) by way of circulars, advertisement, (brokers), putting slide in cinema theatres.

The name board should be a reasonable size.

An Advocate not permit his name to be used in aid of or to make possible the unauthorised practice of law by any agency.

Shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same R - 39 An advocate shall not enter appearance in any case in which there is already a vakalath (Civil cases) or memo of appearance (Criminal Cases) filed by an advocate engaged for a party except with his consent (change of vakalath)

## Advocacy

### Seven Lamps of Advocacy

A good advocate should possess some essential qualities and equipment.

- 1) **Honesty:** The nobleness of legal profession lies in honesty. Advocate should not do any act which will lead to professional misconduct. He should disclose the real facts and legal profession to his clients frankly.
- 2) **Courage:** An advocate must possess courage which is the quality that enables a person to control fear in the face of danger, pain, misfortune, etc. He should not fear about the executive and politicians. He must perform his duty to safeguard the interests of his client.
- 3) **Industry:** Industry is the quality of being hard-working; being always employed usefully. Advocacy is an intellectual profession. Intelligence and knowledge will be sharpened with hard-work and strenuous efforts.
- 4) **Wit:** Wit means clever and humorous expression of ideas; liveliness of spirit. Wit lessens the work load of an advocate. It relaxes his mental strain.
- 5) **Eloquence:** Eloquence means fluent speaking and skilful use of language to persuade or to appeal to the feelings of others. Eloquence attracts the attention of the listener.
- 6) **Judgment:** Judgment is an intellectual capacity, 'the inspiration which enables a man to translate good sense into right action'. An advocate could be in a position to judge the merits and demerits of the case on hearing the brief and seeing the document. He should inform his client the legal position openly after judging the issues.
- 7) **Fellowship:** Fellowship means the membership in friendly association or companionship.
- 8) (7+1) **Tact:** Tact means handling people and situations skilfully and without causing offence. An advocate must be in a position to tackle and win his client, **opponent party, opponent advocate in a smoother way. An advocate should not quarrel with Court or loose temper over trifle things in the Court and outside.**

### Other Rules

Rule 40 requires that every advocate to pay certain sum to the State Bar.

### Duty to Render Legal Aid

Every advocate bear in mind that anyone genuinely in need of lawyer is entitled to legal assistance even though he cannot pay for fully or adequately legal assistance.

To the indigent and oppressed is one of the highest obligations as an advocate owes to society.

### Restriction on other Employment - Rule 47 to 52 BCI

An Advocate shall not personally engaged in any business but he may be a sleeping partner in a business. An advocate who has inherited or succeeded by survivorship to family business may continue it but may not personally participate in the management thereof.

### Right to Lien

An Advocate can claim general lien upon the deeds and papers in his hands for the fee payable to him but there is no general lien.

State v. Narsingh Nair (AIR 1955 Orissa Page 105) in the case it is held that an advocate in the absence of an express agreement cannot claim a lien to hold, if until his own accounts are settled. (J.S. Jaffar v. Mustafa H.M. Yusur (AIR 1993 SC Page 1335)



Advocate withdraw certain amount on behalf of his client from the court receiver but did not pay the whole amount to the client. He was held guilty of professional misconduct.

## **Advertising**

In the matter of thirteen advocate Alahabad AI R 1934 1067.

It is well recognized rule of etiquette in the legal profession that no attempt should be made to advertise on self directly or indirectly. Such a course of action tends to dignify of the Hon'ble Profession.

In England no barrister is allowed to write to solicitors or even to brother practitioners on circuit enrolling his services experience ability or work advertisement of all forms are considered to be highly improper.

## **Professional or Other Misconduct**

Section 35 of the Advocate Act provides for punishment for professional or other misconduct. On receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it will be referred to its disciplinary committee.

**Misconduct:** Means a dereliction of duty.

The Supreme Court explained the term misconduct in the following case.

State of Punjab v. Ramsingh AIR 1992 SC 2188.

Misconduct may involve moral turpitude it must be mis-proper or wrong behaviour unlawful behaviour willful in character for bidden act a transgression of established definite rule of action or code of conduct, but no mere error of Judgement, carelessness or negligence in performance of duty, the act accompanied of bears for bidden quality or character. Professional misconduct are found in Section 10 of Indian Bar Council Act, 1926 and explained in Section 35 of the Advocates Act 1961 .

The expression professional misconduct has been well explained by the Supreme Court in the following case

V.P. Kumaravelu v. BCI AIR 1997 SC 1014.

The court observed that whether negligence will amount to professional misconduct or not will depend upon the facts of each case; gross negligence in the duties practice of sheds of delinquency and would undoubtedly amount to professional misconduct.

Rama Bannerisi v. Ushapati Banerjee Mukhtar AIR 1958 Cal 692.

The Bar Council on receipt of complaint or otherwise is not transmit it to its disciplinary committee but it is obligatory on the part of the council to see if there is reason to believe that an advocate on its roll is guilty of unprofessional act. The requirement of 'Reason to believe' cannot be converted into a formalized procedural road block. It being essentially a borrower against frivolous enquiries. It is implicit in resolution of the Bar council when it says that it has considered the complaint and decided it to refer the matter for the disciplinary committee that it has reason to believe as prescribed by the statute.

Kr. Amarsingh of Sahalpose - v. - Madanmohan Lal AIR 1956 Raj. 58

Charges of professional misconduct must be clearly proved and should not be inferred from ground for suspicion or what may be the error of judgement or indiscretion.

Kasinath Ratho v. U.C. Patnaick AIR 1939 Pat. 343.

Proving facts and circumstances giving rise to give suspicion is not sufficient to establish a charge fraudulent or grossly improper conduct in the discharge of professional duties.

Negligence without moral turpitude or delinquency may not amount to professional misconduct.

P.O. Khanfelkar v. Bar Council of Maharashtra AIR 1984 SC 110

There is a word of difference between giving of improper legal advice and giving of wrong legal advice mere negligence unaccompanied by any moral delinquency in the part of a legal practitioner in the exercise of this profession does not amount to professional misconduct.

### **Case amounting to professional misconduct**

1. Executing vakalth himself by Advocate instead of the party
2. Money withdrawn with ulterior motive from the client account/ court proceedings.
3. Writing letter to magistrate / presiding officer.
4. Advising clients in the court room that they could not justice from the court.
5. Moving applying before any court or authority without informing that a similar application has been presented or rejected by any authority.
6. Not speaking the truth.
7. Making unfolded allegations against a Judge.
8. Tampering with witness is a serious offence for a advocate.
9. Making charges of bribery against judicial officers knowing it to be false.
10. Asking advocate clerk to take documents from record to his house / office.
11. Stating and invoking wrath of Gods in open court by a lawyer.
12. Suggesting to bribe the official in the court amounts to professional misconduct.

Eg. Asking clerk to give money to record clerk for supplying information with regard to case.

13. Bringing influence on the judge to get decision in favour of the clients. Including prosecution witness not to tell the truth.

Mahabir Prasad Singh v. Mis. Jacks Aviation Pvt. Ltd., (AIR 1999 SC P 287)

Boycott call resolution to boycott particular court. Advocate abstaining from court, reporting, next he will not appear the court in further. Advocate not returned the brief. Advocate's conduct is unprofessional and unbecoming of status of advocates.

### **Authorities to empower to punish Professional Misconduct:**

Under Section 38 of the Advocates Act on receipt of a complaint or otherwise State Bar Council can sumato also if reason, is thereof that misconduct present, It will refer to the disciplinary committee.

Bar Council can constitute one or more disciplinary committee. The disciplinary committee consists 3 members.

### **Power (Punishment)**

After giving notice, opportunity to the advocate the State Bar council may make the following orders:

- 1) If no prima facie case then dismiss the complaint.
- 2) Reprimand the Advocate; Suspend the advocate from practice for such period it may deem fit.
- 3) Remove the name of the advocate from state roll of advocate.

The effected person can also file appeal to the Bar council of India from state Bar under section 37 of the Advocates Act.

Appeal to Supreme Court;

Under Section 38 of the Advocates Act appeal can be filed within 60 days to the Supreme Court.

### **Important cases of Misconduct**

**Prahlad Saran Gupta v. Bar Council of India (AIR 1977 SC 1338)**

Prahlad Saran Gupta collected a sum of Rs. 16001- from the judgement debtor and not paid to the Decree Holder But later deposited in the court before going appeal against the bar council disciplinary proceedings.

Supreme Court held the Advocate / Appellant could be held that the end of justice would be met if the punishment of reprimand is imposed on the appellants for his misconduct.

**Hikmat Alikah - v. - Ishwar Prasad (AIR 1977 SC 864)**

In this case an advocate was held guilty of an offence of attempting to commit murder and convicted for it his name was removed from roll of advocates as he was unworthy of remaining in the legal profession.

**P.O. Gupta v. Ram. Murti AIR 1988 SC 283.**

The Appellant Advocate practicing in Delhi. For professional misconduct he was suspended from practice for one year. U/S 38 of the Advocate Act appeal before Supreme Court and the court upheld the order of the state Bar Council suspending from practice for one year.

**Oalal D.S. v. State Bank of India AIR 1993 SC 1608.**

In this case the advocate misappropriated the amount paid towards filling of suit and professional fees. The disciplinary committee found him guilty. On appeal also the Supreme Court declined to interfere and thus upheld the order passed by Bar council of India.

### **Selected Opinions of the disciplinary Committee of the Bar Council of India on Professional Misconduct:**

**Jagadish Singh and Others v. T.C.Sharma (BCI TR Case No. 47/1990)**

Jagadish Singh and others were employees of a School in New Delhi. They approached T.C. Sharma, Advocate and paid a fees, to file a case against their arbitrary dismissal from their School. The allegation is that without filing the case the advocate has given a case number from the Administrative Tribunal, which was found to be false. When the advocate refused to return the fees paid, complaint was filed. Result: the Advocate was found guilty of misconduct.

**Babulal V. Subash Jain (BCI TR Case No. 115/1986)**

The complainant and the Respondent are advocates. The allegation is that though a practicing lawyer, the respondent is also working as an Editor, Printer and Publisher of a weekly which fact was not disclosed at the time of applying for enrolment. Though the respondent denied the allegation it was found that the respondent actively carried on the business as alleged and which amounted to professional misconduct.

**Balswaroopsoni v. Babulalsoni (BCI D.C. Appeal No. 25/1992)**

The Appellant is the son of the Respondent. The allegations in the complaint are that (i) a criminal case pending against him (ii) he introduced him as a surety in a criminal case while acting as an advocate and (iii) has withdrawn in a civil suit the amount deposited in complainant's name. The appellant was found guilty of professional misconduct.

### **Indure Ltd., v. Deo Raj Gupta (BCI TR Case No. 58/1993)**

The Respondent is the advocate of the complainant company. The allegation is that the respondent has not filed suits against two other companies but though he had informed the company as to compliance, he had not filed any suit at all. Finally it was found to be proved beyond doubt and the respondent was prohibited from practicing as an advocate.

### **Commissioner of Civil Supplies & Consumer Protection Dept v. V. Balakrishnan (D.C. Appeal No.15/1995)**

The appeal was against the order of the Bar Council of Tamilnadu giving benefit of doubt to the respondent. The allegation is that he has sent telegrams to Revenue authorities misrepresenting the order in writ petitions. Finally it was held that it was professional misconduct.

### **A. Banumurthy v. Bar Council of Andhra Pradesh (D.C. Appeal No. 3/1994)**

The Appellant was compulsorily retired from Judicial Service for alleged corruption. Subsequently he applied for resumption of practice. The State Bar Council suspended his practice for professional misconduct for two years but on appeal the Bar Council of India has allowed the applicant to continue practice on technical grounds.

### **Dr. D.V.P. Raja v. D. Jayabalan (BCI D.C. Appeal No. 43/1996)**

The Bar Council of India held that the Disciplinary Committee of Bar Council of Tamilnadu has powers to order on merits despite a resolution passed by the Bar Council that there was a prima facie case against the respondent.

### **G.M.H. Irmani v. Iswarappa (BCI D.C. Appeal No. 30/1995)**

The Bar Council of Karnataka as well as the Bar Council of India held that the complainant has not proved his case against the Respondent for professional misconduct.

### **N.S. (Appellant) v. K.V. (Respondent) (BCI D.C. Appeal No. 14/1988)**

Appellant is a Govt. pleader and the respondent is a senior advocate. At the time of going to the Advocates Association they had an argument with regard to a mentioning before a judge of the High Court and it was alleged that the appellant had used vulgar words against the complainant. Both the State Bar Council and the BCI held that there was professional misconduct on the part of the Appellant.

### **P.R. (Complainant) v. V.I. (Respondent) (BCI D.C. Tr. Case No. 101/1988)**

Complainant is a District Munsif and the respondent is a practicing advocate. The advocate filed a contempt petition with serious allegations against the District Munsif. The Bar Council of Andhra Pradesh held that filing the contempt petition against the presiding officer was professional misconduct. Pending the proceedings the advocate was selected and appointed as District Munsif. Bar Council expressed its inability to pass any order and forwarded the records to the High Court for necessary action.

## **Contempt of Courts Act, 1971**

An Act to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto.

## Legal history of Contempt of Courts

Prior to contempt of courts act 1926 the power of the court to punish for contempt was felt to be uncontrolled power which was no doubt remedied by the Act of 1926 and the amending Act 1937. Subsequently a committee was appointed to examine the law pertaining to contempt of courts and as a result the present act was enacted.

## Types of Contempt

As per Section 2(9) contempt of courts means civil contempt and criminal contempt.

**As per section 2(b) of the Act Civil Contempt means:** Wilful disobedience of any judgement, decree, direction order writ or other processes of court or wilful breach of an undertaking given to a court.

**Accordingly section 2(c) of the Act criminal contempt means:** The publication whether by words spoken or written or by signs or by visible representation or otherwise of any matter or the doing of any other act whatsoever which;

- i) Scandalizes or trends to scandalize or lowers or tends to lower the authority of any court or prejudice or interfere or trends to interfere with the due course of any judicial proceeding or interferes or trends to interfere with or obstructs or trends to obstruct administration of justice in any other manner.

Proceedings under contempt of courts act are summary in nature.

Contempt of court is not an offence within the meaning of section 4(2) of Cr. P.C. Merits of the matter need not be gone into a contempt proceeding.

(V.G. Peterson v. O.V Foreces) AIR 1963 SC 692.

## Aim of Contempt Proceedings:

The aim is to deter men from offering any indignities to a court of justice. Ramakrishna Reddy v. State of Madras AIR 1952 SC. 149.

## Kinds of Contempts

There are many kinds of contempts, the main forms of contempt are

- 1) Insult to Judges
- 2) Attack upon judge proceedings
- 3) Comment on pending proceedings with tendency to prejudice fair trial obstruction to officers of courts, witnesses in the parties.
- 4) Abusing the process of the court.
- 5) Breach of duty by officers connected with the court and scandalizing the judges of the courts.

The following are certain examples of contempt with decided important case laws:

**1. Stay of proceedings disobeyed:**

When the superior courts order staying proceedings is disobeyed by the inferior court the later court commits contempt of court. Bardakanta Misra V. Bhimsel Dixit AIR 1972 SC 2466

**2. Speeches or Writings misrepresenting Court proceedings:**

Speeches or Writings misrepresenting the proceedings of the court or prejudicing the public or against a party or involving reflections on parties to a proceeding amount to contempt of Court. Judge commenting in press about pending case. Where a sessions Judge comments in press and television about the pending case it will amount to contempt of court. Subash Chand v. S.M. Agarwala 1984 Cr. L. J. 481 (Delhi).

**3. Shouting at Court:** By shouting at the court is belittling the dignities of the court which cannot ever be permitted as that would heard a dwindling of the faith of the public in affectioners of the system itself. It is unwholesome for any member of the bar to lose his temper and bring about a situation in the public court which can afford justifiable interference to be made of the action being voluntary and intended at lowering the prestige of judiciary. State of A. P. v. Saetharamaiah 1996 (2) ALT 992.

**4. Advocate raising voice:** An advocate raising voice in High pitch and annoying magistrate even after warning will amount to contempt of court. Mohamed Ali v. Prasanna AIR 1995 SC454

**5. Forging order of court.**

- (i) Threatening writ petitioners.
- (ii) Police Officer obstructing execution of decree.
- (iii) Jail superintendent not releasing the accused in spite of the order of the court.
- (iv) Filing of false affidavit will amount to criminal contempt.

Afzal v. State of Haryana AIR 1996 Sc 2326.

Certain acts will not amount to contempt of court they are as follows Under Section-7 a person shall not be guilty of contempt of court for publishing fair and accurate report of a judicial proceeding or any state thereof.

**Fair Criticism**

It is open to anyone to express fair reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity even to make a proper and fair comment on any decision given by him.

Innocent publication and distribution of matter: Fair reporting regarding disposal of case and judgement of journalists. Rama Ooyal Markaraha v.State of M.P. AIR 1978 SC 921

**Punishment for Contempt of Court**

Contempt of court may be punished with simple imprisonment for a term which may extent to 6 months or with time which may extend to Rs. 2000/- or with both. That the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

## **Limitation for actions for Contempt**

No court shall initiate any proceedings of contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt have been committed.

## **ACCOUNTANCY FOR LAWYERS**

Accountancy is the science, art and practice of an accountant. it is adiscipline which records, classifies, summarisesand interprets financial information about the activities of a person or concern so that intelligent decisions can be made about the future actions.

### **FUNCTIONS OF ACCOUNTING:**

1. systematic record of transactions
2. communicating results to the interested parties
3. complinace with legal requirements
4. ascertain the financial position of individual

### **ADVANTAGES OF ACCOUNTING:**

1. replacement of memory
2. evidence in court
3. settlement of taxation liability
4. comparative study
5. assistance to various parties

### **LIMITATIONS OF ACCOUNTING:**

1. records only monetary transactions
2. no realistic information
3. personal bias of accountant affects the accounting statements
4. no real test of managerial performance
5. it lacks a uniform procedure

### **NEED FOR ACCOUNTANCY FOR LAWYERS:**

Lawyers have to maintain accounts and for this they should have the knowledge of accounting due to the following reasons:

1. as a member of the Bar Council, he should know its accounting.
2. he should know Legal services Authorities and Supreme Court Legal Services Committee.
3. he should know the accounting of Advocates as per Supreme Court rules.
4. he shoild know the welfare fund accounting.
5. he should kow how to trepare his own accounts.

## **CASE LAWS:**

### **1. Hikmat Ali Khan v. Ishwar Prasad Arya and Others (AIR 1997 SC 864)**

The Supreme Court held that the conduct of Ishwar Prasad, an advocate was such that his name should be removed from the state roll of advocates as he was found guilty of an offence of attempting to commit murder and convicted for it and as he was unworthy of remaining in the profession.

### **2. Pawan Kumar Sharma v. Gurdial Singh (1998(7) SCC 24)**

The court held that mere ownership of the taxi cannot lead to any irresistible conclusion that he was engaged in "taxi business" to constitute a misconduct.

### **3. Harish Chander Singh v. Suman Dondey (1999(2) SCC 215)**

The court held that the disciplinary committee of bar council could not have held the advocate guilty of charge of misappropriation especially without going the whole of accounts.

### **4. Hamiraj L. Chulani v. Bar Council of Maharashtra & Goa (AIR 1996 SC 1708)**

The Supreme Court held that the rule made by the bar council restricting the entry of a person already arrying on other profession is not arbitrary and at the same time it does not impose reasonable restrictions.

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